

From: Tom Birmingham
Sent: Wednesday, January 7, 2015 7:29 AM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: FW: 5781
Attachments: Section 203(c).docx

John,

The following is an email I received from Ric Ortega, the GM of Grasslands, regarding language regarding refuge supplies. In a subsequent email, which I will forward, I let Ric know that Westlands would support any of the first three alternatives suggested by Grasslands.

I thought this might be helpful in your drafting language to satisfy Grasslands' concerns.

Tom

From: Ric Ortega [mailto:rortega@gwdwater.org]
Sent: Friday, December 05, 2014 2:12 PM
To: Tom Birmingham
Subject: 5781

Hello Tom,

Sorry I missed you at the Costa luncheon in Los Banos but glad to hear you were able to speak with Pepper. He felt the conversation was constructive and was encourage on future collaboration. Also wanted to thank you for your recent efforts on the recent version of the drought bill. We feel it is by far the best version to date and one that waterfowl interests can be generally supportive of given the potential SOD benefits. With that said we are concerned about new language in section 203(c), which could be used against us in the Friant litigation. We have suggested several approaches to neutralize the language (attached). Would Westlands be willing to support our proposed edits? The bill is clearly intended to have no adverse effects on contractors' rights, so we assume that section 203(c) was an oversight. Appreciate the consideration and your time. As always please feel free to contact me directly on my cell if you would like to discuss.

Ric

Sec. 203 (c) RIGHTS AND OBLIGATIONS NOT MODIFIED OR AMENDED.-- Nothing in this Act shall modify or amend the rights and obligations of the parties to any existing--

(1) water service, repayment, settlement, purchase, or exchange contract with the United States, including the obligation to satisfy exchange contracts and settlement contracts ~~prior to the allocation of~~ any other Central Valley Project water; or

Sec. 203 (c) RIGHTS AND OBLIGATIONS NOT MODIFIED OR AMENDED.-- Nothing in this Act shall modify or amend the rights and obligations of the parties to any existing--

(1) water service, repayment, settlement, purchase, or exchange contract with the United States, including the obligation to satisfy exchange contracts and settlement contracts prior to the allocation of any other Central Valley Project water for agricultural or municipal and industrial use; or

Sec. 203 (c) RIGHTS AND OBLIGATIONS NOT MODIFIED OR

AMENDED.-- Nothing in this Act shall modify or amend
the rights and obligations of the parties to any existing--

- (1) water service, repayment, settlement, pur-
chase, or exchange contract with the United States,
including any the obligation to satisfy exchange contracts
and settlement contracts that exists at the time of this
enactment prior to the allocation of any other Central
Valley Project water; or

Sec. 203 (c) RIGHTS AND OBLIGATIONS NOT MODIFIED OR

AMENDED.-- Nothing in this Act shall modify or amend
the rights and obligations of the parties to any existing--

- (1) water service, repayment, settlement, pur-
chase, or exchange contract with the United States,
including the obligation to satisfy exchange contracts
and settlement contracts on a priority basis prior to the
allocation of any other Central Valley Project water; or

From: Tom Birmingham
Sent: Wednesday, January 7, 2015 7:29 AM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: FW: 5781

The following is the complete email exchange I had with Ric Ortega.

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Friday, December 05, 2014 3:46 PM
To: 'Ric Ortega'
Subject: RE: 5781

Then as I said, Westlands would support any of the alternatives that you suggested, with the exception of the last alternative.

Let me know, how I can help.

From: Ric Ortega [mailto:rortega@qwdwater.org]
Sent: Friday, December 05, 2014 3:42 PM
To: 'Tom Birmingham'
Subject: RE: 5781

Thank you Tom,

We are aware of the savings clause and it is a good start, but it does not address our concern. (In confidence), the Friant lawsuit seeks a determination of what the Bureau's existing CVPIA obligations are. Preserving those obligations in a savings clause—whatever they may be—does not alleviate our concerns with the language of section 203(c).

Ric

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Friday, December 05, 2014 3:15 PM
To: 'Ric Ortega'
Subject: RE: 5781

Ric,

I too am sorry that we missed one-another at the luncheon. And I am glad that it has been reported to you that I have been making efforts to ensure that nothing in this bill would take water away from the refuges. That was never our intent.

With the exception of the last alternative, Westlands would support any of your proposed amendments to section 203(c). However, I wonder if any amendment is necessary. In the most recent version of the bill I saw there was a provision added to first section of the third part which provides:

(b) OBLIGATIONS UNDER CENTRAL VALLEY PROJECT IMPROVEMENT ACT.—Nothing in this title affects or modifies any existing obligation under the Central Valley Project Improvement Act (title XXXIV of Public Law 102-575)

It was my understanding that this provision was added to ensure that the bill could not be interpreted as modifying the Secretary's obligation to deliver refuge supplies. Does that language eliminate your concern?

Please call me at (559) 905-7139 if you would like to discuss the matter.

Tom

From: Ric Ortega [<mailto:rortega@gwdwater.org>]

Sent: Friday, December 05, 2014 2:12 PM

To: Tom Birmingham

Subject: 5781

Hello Tom,

Sorry I missed you at the Costa luncheon in Los Banos but glad to hear you were able to speak with Pepper. He felt the conversation was constructive and was encourage on future collaboration. Also wanted to thank you for your recent efforts on the recent version of the drought bill. We feel it is by far the best version to date and one that waterfowl interests can be generally supportive of given the potential SOD benefits. With that said we are concerned about new language in section 203(c), which could be used against us in the Friant litigation. We have suggested several approaches to neutralize the language (attached). Would Westlands be willing to support our proposed edits? The bill is clearly intended to have no adverse effects on contractors' rights, so we assume that section 203(c) was an oversight. Appreciate the consideration and your time. As always please feel free to contact me directly on my cell if you would like to discuss.

Ric

From: Watts, John (Feinstein)
Sent: Wednesday, January 7, 2015 11:13 AM
To: Tom Birmingham
CC: 'Bernhardt, David L.'
Subject: RE: 5781

Thanks for doing this outreach. Which proposal would be the least likely to antagonize Friant and McCarthy, do you think? My initial inclination is the third one.

I think my boss has a really good idea here in seeking to make sure that our savings language on refuges actually works for the refuges.

John

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Wednesday, January 07, 2015 9:29 AM
To: Watts, John (Feinstein)
Cc: 'Bernhardt, David L.'
Subject: FW: 5781

John,

The following is an email I received from Ric Ortega, the GM of Grasslands, regarding language regarding refuge supplies. In a subsequent email, which I will forward, I let Ric know that Westlands would support any of the first three alternatives suggested by Grasslands.

I thought this might be helpful in your drafting language to satisfy Grasslands' concerns.

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To: Tom Birmingham
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Sorry I missed you at the Costa luncheon in Los Banos but glad to hear you were able to speak with Pepper. He felt the conversation was constructive and was encourage on future collaboration. Also wanted to thank you for your recent efforts on the recent version of the drought bill. We feel it is by far the best version to date and one that waterfowl interests can be generally supportive of given the potential SOD benefits. With that said we are concerned about new language in section 203(c), which could be used against us in the Friant litigation. We have suggested several approaches to neutralize the language (attached). Would Westlands be willing to support our proposed edits? The bill is clearly intended to have no adverse effects on contractors' rights, so we assume that section 203(c) was an oversight. Appreciate the consideration and your time. As always please feel free to contact me directly on my cell if you would like to discuss.

Ric

From: Watts, John (Feinstein)
Sent: Sunday, January 25, 2015 10:31 AM
To: 'tbirmingham@westlandswater.org'
CC: 'DBernhardt@BHFS.com'; Yeung, Felix (Feinstein)
Subject: Question

Hal Candee raised a factual issue about the temporary operational flexibility language that I want to ask you about. He stated the following: "In 2010, after carefully analyzing different pumping levels similar to this proposal, Federal Judge Oliver Wanger found that several of the export water contractors admitted that Old and Middle River flows more negative than -7000 cfs would jeopardize the continued existence of delta smelt and two Chinook salmon runs."

- 1) Were these findings in a written ruling, and if so, can you send me the ruling?
- 2) I assume Wanger was looking at a general ceiling on OMR flows, rather than one limited to 28 days of high outflow during droughts with environmental performance standards in place. Do you know what Wanger found that Hal is referring to?

If you can get me at least your initial thoughts today or tonight, I would greatly appreciate it.

Thanks.

John

From: Butler, Jessica
Sent: Thursday, January 29, 2015 12:19 PM
To: Tom Birmingham (tbirmingham@westlandswater.org)
CC: David L. Bernhardt (dbernhardt@bhfs.com)
Subject: do you have a minute to talk - today or tomorrow?

I want to discuss approps priorities for E&W. We're going to meet with committee staff next week and I wanted to get a few ideas down before going in.

Jessica

Jessica Butler
Legislative Director
Rep. David G. Valadao (CA-21)
1004 Longworth House Office Building
Washington, DC 20024
202-225-4695
Jessica.butler@mail.house.gov



From: Tom Birmingham
Sent: Thursday, January 29, 2015 1:57 PM
To: Butler, Jessica
CC: David L. Bernhardt (dbernhardt@bhfs.com)
Subject: Re: do you have a minute to talk - today or tomorrow?

I traveling today. Can I call tomorrow at about 12:30 pm your time?

Sent from my iPhone

On Jan 29, 2015, at 12:23 PM, "Butler, Jessica" <Jessica.Butler@mail.house.gov> wrote:

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Jessica

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Jessica.butler@mail.house.gov

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From: Butler, Jessica
Sent: Thursday, January 29, 2015 2:46 PM
To: 'Tom Birmingham'
Subject: RE: do you have a minute to talk - today or tomorrow?

I'll be in a briefing then, how about 1:30 my time?

Jessica

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Legislative Director
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From: Tom Birmingham
Sent: Thursday, January 29, 2015 3:35 PM
To: Butler, Jessica
Subject: Re: do you have a minute to talk - today or tomorrow?

1:30 your time should work. I will call you.

Sent from my iPad

On Jan 29, 2015, at 2:46 PM, "Butler, Jessica" <Jessica.Butler@mail.house.gov> wrote:

I'll be in a briefing then, how about 1:30 my time?

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<image001.jpg> <image002.png> <image003.jpg>

From: Watts, John (Feinstein)
Sent: Friday, January 30, 2015 7:22 AM

To: Tom Birmingham

CC: Bernhardt, David L.

Subject: Confidential possible edits to language in redline

Attachments: no redirected adverse impacts 1-29-15.docx; emergency projects 1-29-15.docx

Tom,

I have confidentially attached possible edits in redline to a couple of sections of our draft language, for discussion on our call at 1130. This is the product of our outreach so far – I suspect there will be other edits as well. This is working off the framework of December's two year/duration of drought bill. I am curious what you think of these edits.

Best,

John

SEC. _____. NO REDIRECTED ADVERSE IMPACTS.

(a) In General- The Secretary of the Interior shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including such actions under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and other applicable Federal and State laws, shall not directly or indirectly--

- (1) result in the involuntary reduction of water supply or fiscal impacts to individuals or districts who receive water from either the State Water Project or the United States under water rights settlement contracts, exchange contracts, water service contracts, repayment contracts, or water supply contracts; or
- (2) cause redirected adverse water supply or fiscal impacts to those within the Sacramento River watershed, the San Joaquin River watershed or the State Water Project service area.

(b) Costs- To the extent that costs are incurred solely pursuant to or as a result of this Act and would not otherwise have been incurred by any entity or public or local agency or subdivision of the State of California, such costs shall not be borne by any such entity, agency, or subdivision of the State of California, unless such costs are incurred on a voluntary basis.

(c) Rights and Obligations Not Modified or Amended- Nothing in this Act shall modify or amend the rights and obligations of the parties to any existing--

- (1) water service, repayment, settlement, purchase, or exchange contract with the United States, including the any obligation ~~that exists independently of this Act~~ to satisfy exchange contracts and settlement contracts ~~prior to the allocation of any other Central Valley Project water~~; or
- (2) State Water Project water supply or settlement contract with the State.

SEC. ___. EMERGENCY PROJECTS.

- (a) In General- Subject to the priority of individuals or entities, including those with Sacramento River Settlement Contracts, that have priority to the diversion and use of water over water rights held by the United States for operations of the Central Valley Project and over rights held by the State for operations of the State Water Project and, subject to the United States obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors, the Secretaries shall direct the operations of the Central Valley Project and allow the State Water Project to provide the maximum quantity of water supplies possible to Central Valley Project agricultural, municipal and industrial, and refuge service and repayment contractors, and State Water Project contractors, by approving, consistent with applicable laws (including regulations)--
- (1) any project or operations to provide additional water supplies if there is any possible way whatsoever that the Secretaries can do so unless the project or operations constitute a highly inefficient way of providing additional water supplies; and
 - (2) any projects or operations as quickly as possible based on available information to address the emergency conditions.

- (b) Mandate- [In carrying out subsection (a),] the applicable Secretary shall--
- (1) authorize and implement actions to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using findings from the United States Geological Survey on diurnal behavior of juvenile salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits, consistent with operational criteria and monitoring set forth in the California State Water Resources Control Board's Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions, effective January 31, 2014, or a successor order;

(2) in managing Old and Middle River flow under the smelt biological opinion, and without in any way affecting the management of Old and Middle River flow under the salmon biological opinion:

(A) implement turbidity control strategies that allow for increased water deliveries for the Central Valley Project and State Water Project while avoiding a negative impact on the long-term survival delta smelt (*Hypomesus transpacificus*) due to entrainment at Central Valley Project and State Water Project pumping plants;

(B) operating within the ranges provided for in the smelt biological opinion to minimize water supply reductions for the Central Valley Project and the State Water Project, manage reverse flow in Old and Middle Rivers at -5000 cubic feet per second (cfs) unless current scientific data indicate a less negative Old and Middle River flow is necessary to avoid a negative impact on the long-term survival of the listed species, [taking into account other factors affecting the species]; and

(C) show in writing that any determination to manage OMR reverse flow at rates less negative than -5000 cubic feet per second is necessary to avoid a

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negative impact on the long-term survival of the Delta smelt.[taking into account other factors affecting the species.] including an explanation of the data examined and the connection between those data and the choice made prior to reducing pumping to a rate less negative than -5000 cfs described in subparagraph (B);

(3) adopt a 1:1 inflow to export ratio for the increment of increased flow of the San Joaquin River, as measured as a 3-day running average at Vernalis during the period from April 1 through May 31, resulting from voluntary sale, transfers, or exchanges of water from agencies with rights to divert water from the San Joaquin River or its tributaries on the condition that a proposed sale, transfer, or exchange under this paragraph may only proceed if the Secretary of the Interior determines that the environmental effects of the proposed sale, transfer, or exchange are consistent with effects permissible under applicable law (including regulations), and provided that Delta conditions are suitable to allow movement of the acquired, transferred, or exchanged water through the Delta consistent with the Central Valley Project's and the State Water Project's permitted water rights;

(4) Using the shortest practicable process provided under applicable law (including regulations), issue all necessary permit decisions under the authority of the Secretaries after receiving a completed application by the State to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality for Central Valley Project and State Water Project contractors and other water users, which barriers or gates should provide benefits for species protection and in-Delta water user water quality and shall be designed such that formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) would not be necessary;

(5)(A) complete all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on water transfer requests associated with voluntarily fallowing nonpermanent crops in the State, using the shortest practicable process provided under applicable law (including regulations

(6) allow any North of Delta agricultural water service contractor with unused Central Valley Project water to take delivery of such unused water through April 15, of the contract year immediately following the contract year in which such water was allocated, if--

- (A) the contractor requests the extension; and
- (B) the requesting contractor certifies that, without the extension, the contractor would have insufficient supplies to adequately meet water delivery obligations;

(7) implement instream and offsite projects in the Delta and upstream in the Sacramento River and San Joaquin basins, in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to actions taken under this Act.

(c) Other Agencies- To the extent that a Federal agency other than agencies headed by the Secretaries has a role in approving projects described in subsections (a) and (b), the provisions of this section shall apply to those Federal agencies.

(d) Accelerated Project Decision and Elevation-

(1) IN GENERAL- Upon the request of the State, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions relating to a Federal project or operation to provide additional water supplies or address emergency drought conditions pursuant to subsections (a) and (b).

(2) REQUEST FOR RESOLUTION-

(A) IN GENERAL- Upon the request of the State, the head of an agency referred to in subsection (a), or the head of another Federal agency responsible for carrying out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide emergency water supplies.

(B) MEETING- The Secretary of the Interior shall convene a meeting requested under subparagraph (A) not later than 7 days after receiving the meeting request.

(3) NOTIFICATION- Upon receipt of a request for a meeting under this subsection, the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including the project to be reviewed and the date for the meeting.

(4) DECISION- Not later than 10 days after the date on which a meeting is requested under paragraph (2), the head of the relevant Federal agency shall issue a final decision on the project in writing.

(5) MEETING CONVENED BY SECRETARY- The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

From: Watts, John (Feinstein)
Sent: Friday, January 30, 2015 8:42 AM
To: Tom Birmingham; Bernhardt, David L.
Subject: Gov. Brown sees path to compromise drought legislation

In case you didn't see this -- it is a welcome development.

<http://www.eenews.net/eedaily/2015/01/30/stories/1060012592>

Gov. Brown sees path to compromise drought legislation

Debra Kahn, E&E reporter

Published: Friday, January 30, 2015

SAN FRANCISCO -- California Gov. Jerry Brown (D) yesterday expressed confidence in congressional drought bill negotiations and said he thought "changes" could be made to the state's water policies.

When asked about tensions between lawmakers over California's historic drought, now stretching into a fourth year, Brown said he was confident in President Obama's veto authority to produce a workable bill.

Sen. Barbara Boxer (D-Calif.) and Rep. Kevin McCarthy (R-Calif.) have been sparring in the media in recent days over last year's negotiations, which fell apart at the end of last session. Negotiations between Sen. Dianne Feinstein (D-Calif.) and House Republicans swiftly restarted at the beginning of the 114th Congress, with Feinstein spearheading discussions with House Democrats earlier this week ([Greenwire](#), Jan. 28).

"As long as President Obama is president, I'm not concerned at all," Brown said. "At the end of the day, the Congress is going to have to work with the executive branch to fashion sensible rules."

Measures pushed in the House and the Senate have centered on increasing water deliveries to farms and cities in the southern half of the state. To do that, lawmakers have targeted Endangered Species Act protections for fish species that inhabit the Sacramento-San Joaquin River Delta, the state's main water hub -- inflaming long-standing geographic tensions in the state over how much water is reserved for farms versus endangered fish and other species.

Brown had issued a statement last year against a bill that passed the House in February, calling it an "unwelcome and divisive intrusion" into the state's water management ([E&E Daily](#), Feb. 4, 2014).

Brown said yesterday that "changes" could be made to water policy, but didn't get into specifics, instead cautioning that water is a sensitive topic in California.

"I think there are changes that can be made, but we have to remember here that water in California is contentious, that people who live around Stockton see it one way; people who live in Fresno see it another way."

"We have to take into account many different perspectives in order to do what we have to do to create a more reliable water supply," he said, pointing to the passage in November of a \$7.5 billion state bond package for water projects.

"It's just another contentious issue, and I'd say it's pretty much small potatoes compared to all the other conflicts that Mr. McCarthy and the Republicans have with the president."

From: Tom Birmingham
Sent: Friday, January 30, 2015 9:06 AM
To: 'Bernhardt, David L.'
Subject: FW: Confidential possible edits to language in redline

Can you join an 11:30 EST call?

From: Watts, John (Feinstein) [mailto:John_Watts@feinstein.senate.gov]
Sent: Friday, January 30, 2015 6:22 AM
To: Tom Birmingham
Cc: Bernhardt, David L.
Subject: Confidential possible edits to language in redline

Tom,

I have confidentially attached possible edits in redline to a couple of sections of our draft language, for discussion on our call at 1130. This is the product of our outreach so far – I suspect there will be other edits as well. This is working off the framework of December's two year/duration of drought bill. I am curious what you think of these edits.

Best,

John

From: Tom Birmingham
Sent: Friday, January 30, 2015 9:13 AM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: RE: Confidential possible edits to language in redline

John,

I have asked David Bernhardt to join our call at 11:30 EST. Please call (800) [REDACTED] - [REDACTED] pass code [REDACTED] for the call.

Thank you,
Tom

From: Watts, John (Feinstein) [mailto:John_Watts@feinstein.senate.gov]
Sent: Friday, January 30, 2015 6:22 AM
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Best,

John

From: Watts, John (Feinstein)
Sent: Friday, January 30, 2015 3:34 PM
To: Tom Birmingham; Bernhardt, David L.
CC: Yeung, Felix (Feinstein)
Subject: Confidential current draft proposed changes
Attachments: no redirected adverse impacts 1-30-15.docx; emergency projects 1-30-15.docx

Tom,

I have confidentially attached our current draft of the changes following our conversation this morning, with two further items to note:

- 1) After thinking about it further, I am not sure it is a good idea to include the change at the beginning of subsection (b) in the “emergency projects” section that I proposed this morning. I discussed this with David, and I think he agrees. I have left it in brackets for now, and David may talk to you about it at some point.
- 2) I added “operating within the ranges provided for in the smelt biological opinion,” to the beginning of subparagraph (b)(2)(A) of the “emergency projects” section. I believe this is the intent, and it will help address potential ambiguity in this subparagraph.

Please let me know if you have any other suggested edits, as I continue to review these and other sections of the language. Have a good weekend.

John

SEC. _____. NO REDIRECTED ADVERSE IMPACTS.

(a) In General- The Secretary of the Interior shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including such actions under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and other applicable Federal and State laws, shall not directly or indirectly--

- (1) result in the involuntary reduction of water supply or fiscal impacts to individuals or districts who receive water from either the State Water Project or the United States under water rights settlement contracts, exchange contracts, water service contracts, repayment contracts, or water supply contracts; or
- (2) cause redirected adverse water supply or fiscal impacts to those within the Sacramento River watershed, the San Joaquin River watershed or the State Water Project service area.

(b) Costs- To the extent that costs are incurred solely pursuant to or as a result of this Act and would not otherwise have been incurred by any entity or public or local agency or subdivision of the State of California, such costs shall not be borne by any such entity, agency, or subdivision of the State of California, unless such costs are incurred on a voluntary basis.

(c) Rights and Obligations Not Modified or Amended- Nothing in this Act shall modify or amend the rights and obligations of the parties to any existing--

- (1) water service, repayment, settlement, purchase, or exchange contract with the United States, including the any United States obligation ~~that exists independently of this Act~~ to satisfy exchange contracts and settlement contracts ~~prior to the allocation of any other Central Valley Project water~~; or
- (2) State Water Project water supply or settlement contract with the State.

SEC. ___. EMERGENCY PROJECTS.

- (a) In General- Subject to the priority of individuals or entities, including those with Sacramento River Settlement Contracts, that have priority to the diversion and use of water over water rights held by the United States for operations of the Central Valley Project and over rights held by the State for operations of the State Water Project and, subject to the United States obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors, the Secretaries shall direct the operations of the Central Valley Project and allow the State Water Project to provide the maximum quantity of water supplies possible to Central Valley Project agricultural, municipal and industrial, and refuge service and repayment contractors, and State Water Project contractors, by approving, consistent with applicable laws (including regulations)--
- (1) any project or operations to provide additional water supplies if there is any possible way whatsoever that the Secretaries can do so unless the project or operations constitute a highly inefficient way of providing additional water supplies; and
 - (2) any projects or operations as quickly as possible based on available information to address the emergency conditions.

- (b) Mandate- ~~[In carrying out subsection (a).]~~ The applicable Secretary shall--
- (1) authorize and implement actions to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using findings from the United States Geological Survey on diurnal behavior of juvenile salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits, consistent with operational criteria and monitoring set forth in the California State Water Resources Control Board's Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions, effective January 31, 2014, or a successor order;

(2) in managing Old and Middle River flow under the smelt biological opinion, and without affecting the management of Old and Middle River flow under the salmon biological opinion:

- (A) operating within the ranges provided for in the smelt biological opinion, implement turbidity control strategies that allow for increased water deliveries for the Central Valley Project and State Water Project while avoiding a negative impact on the long-term survival delta smelt (*Hypomesus transpacificus*) due to entrainment at Central Valley Project and State Water Project pumping plants;
- (B) operating within the ranges provided for in the smelt biological opinion to minimize water supply reductions for the Central Valley Project and the State Water Project, manage reverse flow in Old and Middle Rivers at -5000 cubic feet per second (cfs) unless current scientific data indicate a less negative Old and Middle River flow is necessary to avoid a negative impact on the long-term survival of the listed species, taking into account other factors currently affecting the species; and

← Formatted: Indent: First line: 0.5

(C) show in writing that any determination to manage OMR reverse flow at rates less negative than -5000 cubic feet per second is necessary to avoid a negative impact on the long-term survival of the Delta smelt, taking into account other factors currently affecting the species, including an explanation of the data examined and the connection between those data and the choice made prior to reducing pumping to a rate less negative than -5000 cfs described in subparagraph (B);

(3) adopt a 1:1 inflow to export ratio for the increment of increased flow of the San Joaquin River, as measured as a 3-day running average at Vernalis during the period from April 1 through May 31, resulting from voluntary sale, transfers, or exchanges of water from agencies with rights to divert water from the San Joaquin River or its tributaries on the condition that a proposed sale, transfer, or exchange under this paragraph may only proceed if the Secretary of the Interior determines that the environmental effects of the proposed sale, transfer, or exchange are consistent with effects permissible under applicable law (including regulations), and provided that Delta conditions are suitable to allow movement of the acquired, transferred, or exchanged water through the Delta consistent with the Central Valley Project's and the State Water Project's permitted water rights;

(4) Using the shortest practicable process provided under applicable law (including regulations), issue all necessary permit decisions under the authority of the Secretaries after receiving a completed application by the State to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality for Central Valley Project and State Water Project contractors and other water users, which barriers or gates should provide benefits for species protection and in-Delta water user water quality and shall be designed such that formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) would not be necessary;

(5)(A) complete all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on water transfer requests associated with voluntarily fallowing nonpermanent crops in the State, using the shortest practicable process provided under applicable law (including regulations

(6) allow any North of Delta agricultural water service contractor with unused Central Valley Project water to take delivery of such unused water through April 15, of the contract year immediately following the contract year in which such water was allocated, if--

- (A) the contractor requests the extension; and
- (B) the requesting contractor certifies that, without the extension, the contractor would have insufficient supplies to adequately meet water delivery obligations;

(7) implement instream and offsite projects in the Delta and upstream in the Sacramento River and San Joaquin basins, in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to actions taken under this Act.

(c) Other Agencies- To the extent that a Federal agency other than agencies headed by the Secretaries has a role in approving projects described in subsections (a) and (b), the provisions of this section shall apply to those Federal agencies.

(d) Accelerated Project Decision and Elevation-

(1) IN GENERAL- Upon the request of the State, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions relating to a Federal project or operation to provide additional water supplies or address emergency drought conditions pursuant to subsections (a) and (b).

(2) REQUEST FOR RESOLUTION-

(A) IN GENERAL- Upon the request of the State, the head of an agency referred to in subsection (a), or the head of another Federal agency responsible for carrying out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide emergency water supplies.

(B) MEETING- The Secretary of the Interior shall convene a meeting requested under subparagraph (A) not later than 7 days after receiving the meeting request.

(3) NOTIFICATION- Upon receipt of a request for a meeting under this subsection, the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including the project to be reviewed and the date for the meeting.

(4) DECISION- Not later than 10 days after the date on which a meeting is requested under paragraph (2), the head of the relevant Federal agency shall issue a final decision on the project in writing.

(5) MEETING CONVENED BY SECRETARY- The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

From: Watts, John (Feinstein)
Sent: Tuesday, February 3, 2015 1:30 PM
To: Tom Birmingham
CC: Bernhardt, David L.
Subject: Confidential: additional language on 1:1 transfers drafted by BOR as a drafting service

Tom, Does the additional language in redline work for you? Also, I have a drafting question. The way this is drafted, all three conditions apply to efforts to move transferred or acquired water with a 1:1 ratio, even if it is a critically dry year or the 1:1 ratio would otherwise apply under the biop. Is this a problem? My understanding is no, that the three conditions would be met anyway, but I am not sure about the third condition, so I want to get your feedback on this.

(3) adopt a 1:1 inflow to export ratio for the increment of increased flow of the San Joaquin River, as measured as a 3-day running average at Vernalis during the period from April 1 through May 31, resulting from voluntary sale, transfers, or exchanges of water from agencies with rights to divert water from the San Joaquin River or its tributaries, if the following conditions are met:

- (A) a proposed sale, transfer, or exchange under this paragraph may only proceed if the Secretary of the Interior determines that the environmental effects of the proposed sale, transfer, or exchange are consistent with effects permissible under applicable law (including regulations);
- (B) Delta conditions are suitable to allow movement of the acquired, transferred, or exchanged water through the Delta consistent with the Central Valley Project's and the State Water Project's permitted water rights; and
- (C) such voluntary sale, transfer or exchange of water is in addition to projected CVP flow releases anticipated in the absence of the sale, transfer or exchange.

From: Tom Birmingham
Sent: Tuesday, February 3, 2015 5:48 PM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: RE: Confidential: additional language on 1:1 transfers drafted by BOR as a drafting service

John,

I suggest the following:

"such voluntary sale, transfer or exchange of water results in flow that is in addition to projected flow anticipated in the absence of the sale, transfer or exchange."

This modified the language deletes "CVP" and "releases" to reflect that anticipated flow in the San Joaquin River is the product of more than just CVP releases. I hope this modified language captures the intent.

Tom

From: Watts, John (Feinstein) [mailto:John_Watts@feinstein.senate.gov]
Sent: Tuesday, February 03, 2015 12:30 PM
To: Tom Birmingham
Cc: Bernhardt, David L.
Subject: Confidential: additional language on 1:1 transfers drafted by BOR as a drafting service

Tom, Does the additional language in redline work for you? Also, I have a drafting question. The way this is drafted, all three conditions apply to efforts to move transferred or acquired water with a 1:1 ratio, even if it is a critically dry year or the 1:1 ratio would otherwise apply under the biop. Is this a problem? My understanding is no, that the three conditions would be met anyway, but I am not sure about the third condition, so I want to get your feedback on this.

(3) adopt a 1:1 inflow to export ratio for the increment of increased flow of the San Joaquin River, as measured as a 3-day running average at Vernalis during the period from April 1 through May 31, resulting from voluntary sale, transfers, or exchanges of water from agencies with rights to divert water from the San Joaquin River or its tributaries, if the following conditions are met:

- (A) a proposed sale, transfer, or exchange under this paragraph may only proceed if the Secretary of the Interior determines that the environmental effects of the proposed sale, transfer, or exchange are consistent with effects permissible under applicable law (including regulations);
- (B) Delta conditions are suitable to allow movement of the acquired, transferred, or exchanged water through the Delta consistent with the Central Valley Project's and the State Water Project's permitted water rights; and
- (C) such voluntary sale, transfer or exchange of water is in addition to projected CVP flow releases flow anticipated in the absence of the sale, transfer or exchange such voluntary sale, transfer or exchange.

From: Watts, John (Feinstein)
Sent: Wednesday, February 4, 2015 8:26 AM
To: Tom Birmingham
CC: 'Bernhardt, David L.'
Subject: RE: Confidential: additional language on 1:1 transfers drafted by BOR as a drafting service

Tom, Can you call me to discuss this when you get a chance? I want to make sure I fully understand the context before I go back to BOR. Thanks.

John

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Tuesday, February 03, 2015 7:48 PM
To: Watts, John (Feinstein)
Cc: 'Bernhardt, David L.'
Subject: RE: Confidential: additional language on 1:1 transfers drafted by BOR as a drafting service

John,

I suggest the following:

[“such voluntary sale, transfer or exchange of water results in flow that is in addition to projected flow anticipated in the absence of the sale, transfer or exchange.”](#)

This modified the language deletes “CVP” and “releases” to reflect that anticipated flow in the San Joaquin River is the product of more than just CVP releases. I hope this modified language captures the intent.

Tom

From: Watts, John (Feinstein) [mailto:John_Watts@feinstein.senate.gov]
Sent: Tuesday, February 03, 2015 12:30 PM
To: Tom Birmingham
Cc: Bernhardt, David L.
Subject: Confidential: additional language on 1:1 transfers drafted by BOR as a drafting service

Tom, Does the additional language in redline work for you? Also, I have a drafting question. The way this is drafted, all three conditions apply to efforts to move transferred or acquired water with a 1:1 ratio, even if it is a critically dry year or the 1:1 ratio would otherwise apply under the biop. Is this a problem? My understanding is no, that the three conditions would be met anyway, but I am not sure about the third condition, so I want to get your feedback on this.

(3) adopt a 1:1 inflow to export ratio for the increment of increased flow of the San Joaquin River, as measured as a 3-day running average at Vernalis during the period from April 1 through May 31, resulting from voluntary sale, transfers, or exchanges of water from agencies

with rights to divert water from the San Joaquin River or its tributaries, if the following conditions are met:

- (A) a proposed sale, transfer, or exchange under this paragraph may only proceed if the Secretary of the Interior determines that the environmental effects of the proposed sale, transfer, or exchange are consistent with effects permissible under applicable law (including regulations);
- (B) Delta conditions are suitable to allow movement of the acquired, transferred, or exchanged water through the Delta consistent with the Central Valley Project's and the State Water Project's permitted water rights; and
- (C) such voluntary sale, transfer or exchange of water is in addition to projected CVP flow releases flow anticipated in the absence of the sale, transfer or exchange such voluntary sale, transfer or exchange.

From: Tom Birmingham
Sent: Wednesday, February 4, 2015 2:32 PM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: FW: Confidential: additional language on 1:1 transfers drafted by BOR as a drafting service

John,

In follow up to our discussion, I suggest the following:

(3) adopt a 1:1 inflow to export ratio for the increment of increased flow of the San Joaquin River, as measured as a 3-day running average at Vernalis during the period from April 1 through May 31, resulting from voluntary sale, transfers, or exchanges of water from agencies with rights to divert water from the San Joaquin River or its tributaries, if the following conditions are met:

(A) a proposed sale, transfer, or exchange under this paragraph may only proceed if the Secretary of the Interior determines that the environmental effects of the proposed sale, transfer, or exchange are consistent with effects permissible under applicable law (including regulations);

(B) Delta conditions are suitable to allow movement of the acquired, transferred, or exchanged water through the Delta consistent with the Central Valley Project's and the State Water Project's permitted water rights; and

(C) such voluntary sale, transfer or exchange of water results in flow that is in addition to flow that otherwise would occur in the absence of the sale, transfer or exchange such voluntary sale, transfer or exchange.

Please call me if you have further questions.

Tom

From: Watts, John (Feinstein) [mailto:John_Watts@feinstein.senate.gov]
Sent: Wednesday, February 04, 2015 7:26 AM
To: Tom Birmingham
Cc: 'Bernhardt, David L.'
Subject: RE: Confidential: additional language on 1:1 transfers drafted by BOR as a drafting service

Tom, Can you call me to discuss this when you get a chance? I want to make sure I fully understand the context before I go back to BOR. Thanks.

John

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Tuesday, February 03, 2015 7:48 PM
To: Watts, John (Feinstein)
Cc: 'Bernhardt, David L.'
Subject: RE: Confidential: additional language on 1:1 transfers drafted by BOR as a drafting service

John,

I suggest the following:

“such voluntary sale, transfer or exchange of water results in flow that is in addition to projected flow anticipated in the absence of the sale, transfer or exchange.”

This modified the language deletes “CVP” and “releases” to reflect that anticipated flow in the San Joaquin River is the product of more than just CVP releases. I hope this modified language captures the intent.

Tom

From: Watts, John (Feinstein) [mailto:John_Watts@feinstein.senate.gov]

Sent: Tuesday, February 03, 2015 12:30 PM

To: Tom Birmingham

Cc: Bernhardt, David L.

Subject: Confidential: additional language on 1:1 transfers drafted by BOR as a drafting service

Tom, Does the additional language in redline work for you? Also, I have a drafting question. The way this is drafted, all three conditions apply to efforts to move transferred or acquired water with a 1:1 ratio, even if it is a critically dry year or the 1:1 ratio would otherwise apply under the biop. Is this a problem? My understanding is no, that the three conditions would be met anyway, but I am not sure about the third condition, so I want to get your feedback on this.

(3) adopt a 1:1 inflow to export ratio for the increment of increased flow of the San Joaquin River, as measured as a 3-day running average at Vernalis during the period from April 1 through May 31, resulting from voluntary sale, transfers, or exchanges of water from agencies with rights to divert water from the San Joaquin River or its tributaries, if the following conditions are met:

- (A) a proposed sale, transfer, or exchange under this paragraph may only proceed if the Secretary of the Interior determines that the environmental effects of the proposed sale, transfer, or exchange are consistent with effects permissible under applicable law (including regulations);
- (B) Delta conditions are suitable to allow movement of the acquired, transferred, or exchanged water through the Delta consistent with the Central Valley Project's and the State Water Project's permitted water rights; and
- (C) such voluntary sale, transfer or exchange of water is in addition to projected CVP flow releases flow anticipated in the absence of the sale, transfer or exchange such voluntary sale, transfer or exchange.

From: Watts, John (Feinstein)
Sent: Thursday, February 5, 2015 10:25 AM
To: Tom Birmingham
CC: Bernhardt, David L.; Yeung, Felix (Feinstein); Peterson, James (Feinstein)
Subject: Confidential: question on biops and 1:1 ratio

Tom, I received the below comment from an environmental advocate about the 1:1 ratio provision in the draft legislation:

'Also, you stated [this is a reference to me] that you believe the BiOps are silent about water transfers and therefore legislating a change to the BiOp's 1:1 ratio is not really in conflict with the BiOp. But I went back and confirmed that the BiOps are NOT silent, and in fact, transferred water is explicitly included:

"This consultation addresses the long-term operations of the CVP and SWP, including the overall impacts of the total volume of water diverted from the Central Valley (e.g., higher summer flows, lower spring flows, water temperature, etc). The volume of water delivered may be reduced from full contract amounts, consistent with the terms of individual contracts. In addition, take from the administration of water transfers is included in CVP/SWP operations for this consultation." (Page 729) (Emphasis added)'

I have two questions for you about this comment:

- 1) I believe the quoted language is not at all determinative of the scope of the i/e provisions in the biop. Instead, this language appears to me to address the general scope of the section 7 consultation under the NMFS biop and the scope of the incidental take protection. This is supported by the sentence on page 729 of the biop directly following the passage quoted above, which says, "However, this consultation does not address ESA section 7(a)(2) compliance for individual water supply contracts." No one would suggest that this sentence means deliveries under the individual contracts are somehow exempt from the i/e ratio; accordingly, no one should necessarily conclude that because transfer waters are included within the scope of consultation, they are necessarily included in the i/e ratio.

Do you agree with my analysis here?

- 2) If you agree with my point above, this sends us back to pages 643-44 of the biop, and the question of what is meant to be included in the Vernalis flows subject to the i/e ratio. I think our argument that transfers should not be included is much stronger if we can say that few transfers would occur if a greater than 1:1 ratio were required. If we can make this statement, then the availability of the 1:1 ration is what allows transferred water to come into the Delta, and there should be no harm in exporting that same quantity.

Can we accurately make the statement that few transfers would occur if a greater than 1:1 ratio were required?

Thanks,

John

From: Tom Birmingham
Sent: Monday, February 16, 2015 3:59 PM
To: 'Nelson, Damon'; 'Butler, Jessica'
CC: 'Bernhardt, David L.'
Subject: Dinner on March 10

Damon and Jessica,

I will be in DC the week of March 9 for meetings at Interior related to drainage. I have asked Tony to make a reservation at Del Frisco for March 10, at 7:00 p.m. Can you join me? I suspect we will have a lot to discuss. I am hopeful that David Bernhardt will also be able to be there.

Tom

From: Butler, Jessica
Sent: Monday, February 16, 2015 5:09 PM
To: Tom Birmingham
CC: Nelson, Damon; Bernhardt, David L.
Subject: Re: Dinner on March 10

I'm actually going to be in Texas that entire week. I'll be sure and check in with you both afterwards.

Jessica Butler
Legislative Director
Rep. David G. Valadao
202-225-4695

On Feb 16, 2015, at 5:59 PM, "Tom Birmingham" <tbirmingham@westlandswater.org> wrote:

Damon and Jessica,

I will be in DC the week of March 9 for meetings at Interior related to drainage. I have asked Tony to make a reservation at Del Frisco for March 10, at 7:00 p.m. Can you join me? I suspect we will have a lot to discuss. I am hopeful that David Bernhardt will also be able to be there.

Tom

From: Jason Peltier

Sent: Thursday, February 19, 2015 3:33 PM

To: T Birmingham (tbirmingham@westlandswater.org); 'Alison MacLeod'; 'Carmela McHenry'; 'Carolyn Jensen'; 'Catherine Karen'; 'Dan Pope'; 'Darlene Knauf'; 'David Bernhardt'; 'Dennis Cardoza'; 'Denny Rehberg'; 'Doug Subers'; 'Ed Manning'; 'Erick Mullen'; 'Gayle Holman'; 'Jason Peltier'; 'Jim Watson'; 'Joe Findaro'; 'Mike Burns'; 'Sheila Greene'; 'Susan Ramos'

Subject: Summary of 2014 and current conditions

Attachments: dwr_pres18Feb15.pdf

Here is a presentation by DWR from yesterday.

CVP & SWP

Drought Contingency Plan and Temporary Urgent Change Petition

February 18, 2015

D R O U G H T P R E P A R E D N E S S & R E S P O N S E



PUBLIC SAFETY

ENVIRONMENTAL STEWARDSHIP

ECONOMIC STABILITY

Statewide Drought Update

D R O U G H T P R E P A R E D N E S S & R E S P O N S E

California's Drought



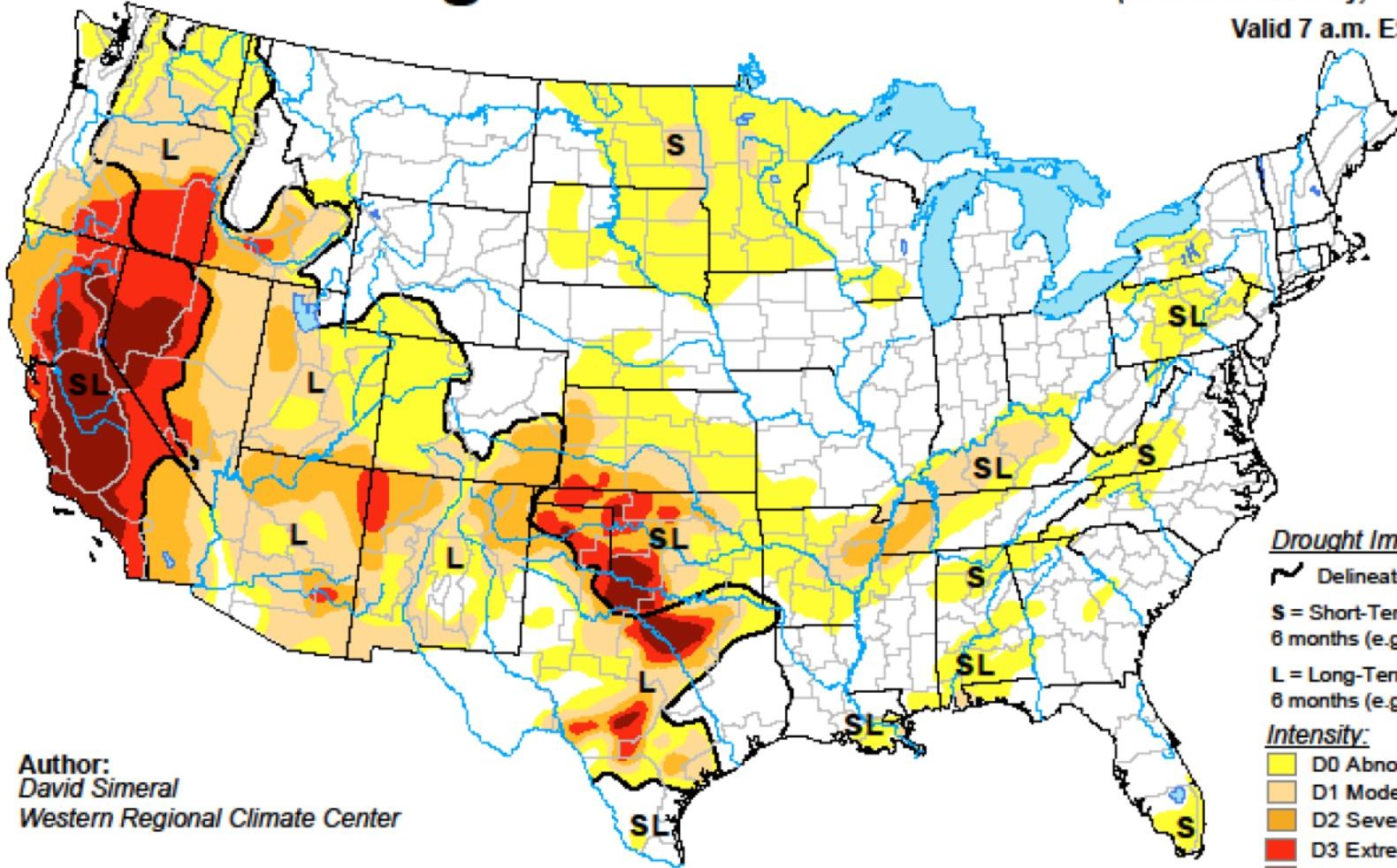
- Governor Declared Drought Emergency
- 2014 - Third dry water year statewide
- 2014 - Warmest year on record
- 2012-2014 - Driest 3 years on record
- January 2015 – Driest in most areas
- 2015 - Warmer and dry
- Statewide storage below average
- Groundwater basins continue to be depleted
- Local conditions are degrading
- High level of local, State and federal coordination

U.S. Drought Monitor

February 10, 2015

(Released Thursday, Feb. 12, 2015)

Valid 7 a.m. EST



Author:
David Simeral
Western Regional Climate Center

Drought Impact Types:

- Wavy line = Delineates dominant impacts
- S = Short-Term, typically less than 6 months (e.g. agriculture, grasslands)
- L = Long-Term, typically greater than 6 months (e.g. hydrology, ecology)

Intensity:

- Yellow = D0 Abnormally Dry
- Light Orange = D1 Moderate Drought
- Orange = D2 Severe Drought
- Red = D3 Extreme Drought
- Dark Red = D4 Exceptional Drought

The Drought Monitor focuses on broad-scale conditions. Local conditions may vary. See accompanying text summary for forecast statements.



<http://droughtmonitor.unl.edu/>

Statewide Drought Conditions

Official State of Emergency
Declared on
January 17, 2014

Local Emergencies Declared

- 25 Counties
- 13 Cities
- 9 Tribal Reservations
- 13 Special Districts

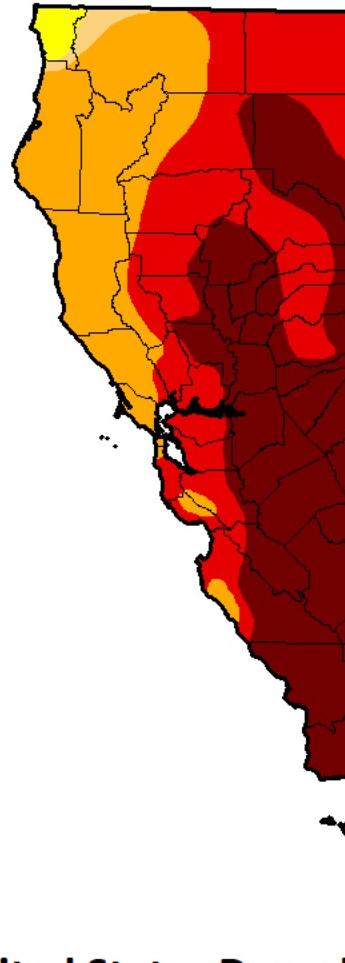
**County & Tribal Drought
Task Force**

- 30 Counties
- 3 Tribes

Intensity:

■ D0 - Abnormally Dry
■ D1 - Moderate Drought
■ D2 - Severe Drought

■ D3 - Extreme Drought
■ D4 - Exceptional Drought

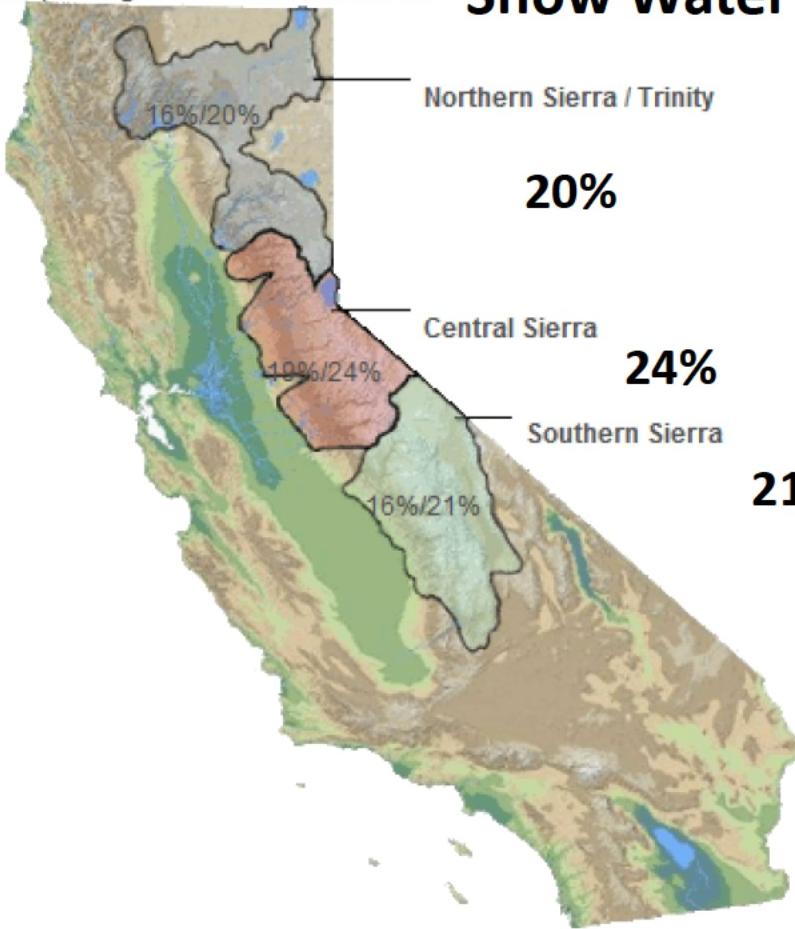


Exceptional 40%
Extreme 67%
37 Million People

United States Drought Monitor
February 10, 2015

% Apr 1 Avg. / % Normal for this Date

Snow Water Equivalents



20%

Northern Sierra / Trinity

24%

Central Sierra

21%

Southern Sierra

Statewide

22%

Normal to Date

17%

April 1 Average

Change Date :



17-Feb-2015

Refresh Data

NORTH

Data For: 17-Feb-2015

Number of Stations Reporting	29
Average snow water equivalent	4.5"
Percent of April 1 Average	16%
Percent of normal for this date	20%

CENTRAL

Data For: 17-Feb-2015

Number of Stations Reporting	44
Average snow water equivalent	5.8"
Percent of April 1 Average	19%
Percent of normal for this date	24%

SOUTH

Data For: 17-Feb-2015

Number of Stations Reporting	29
Average snow water equivalent	4.4"
Percent of April 1 Average	16%
Percent of normal for this date	21%

STATEWIDE SUMMARY

Data For: 17-Feb-2015

Number of Stations Reporting	102
Average snow water equivalent	5.0"
Percent of April 1 Average	17%
Percent of normal for this date	22%

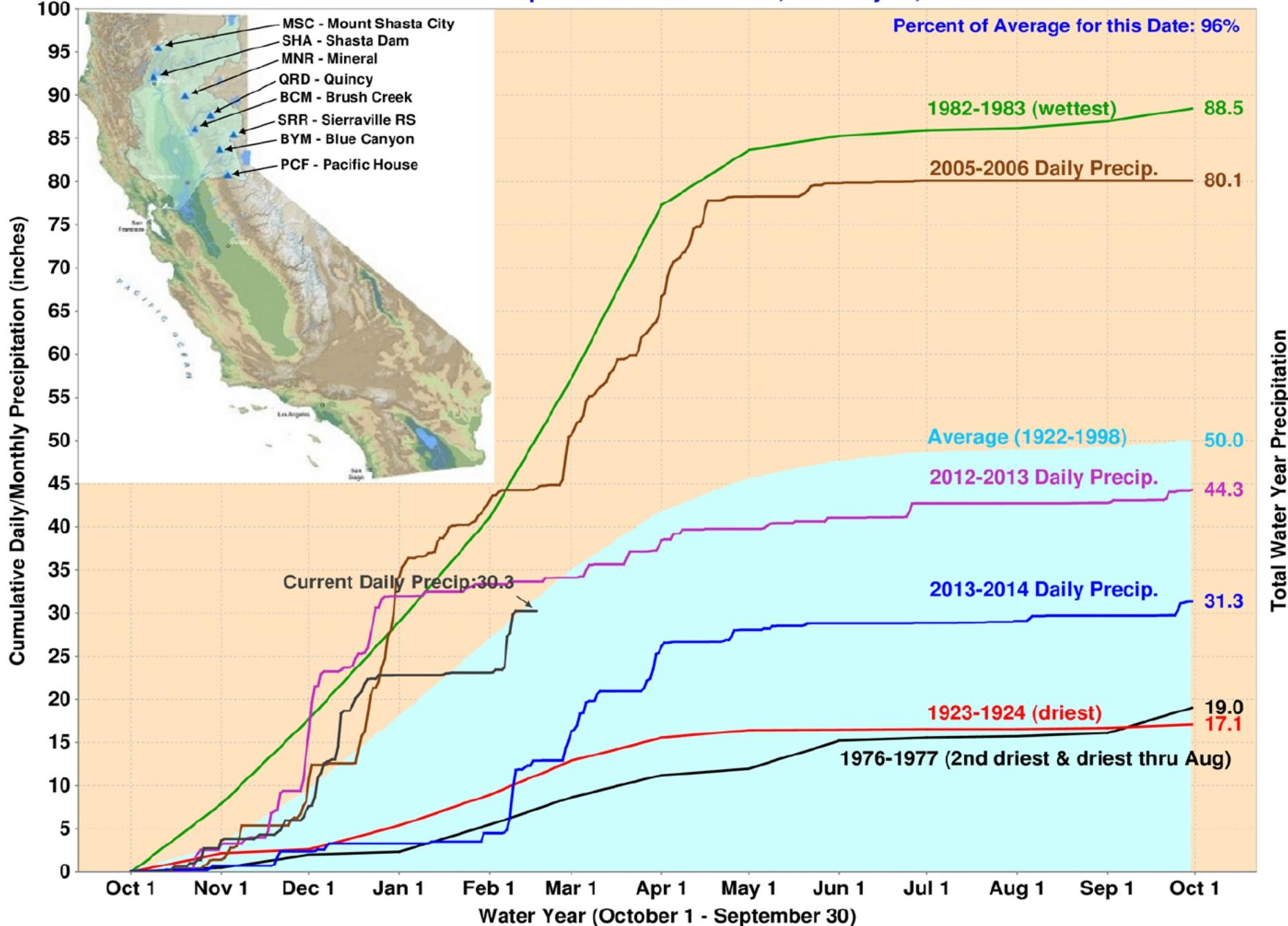
Comparison of Snow Water Equivalents (inches)

2014 vs 2015

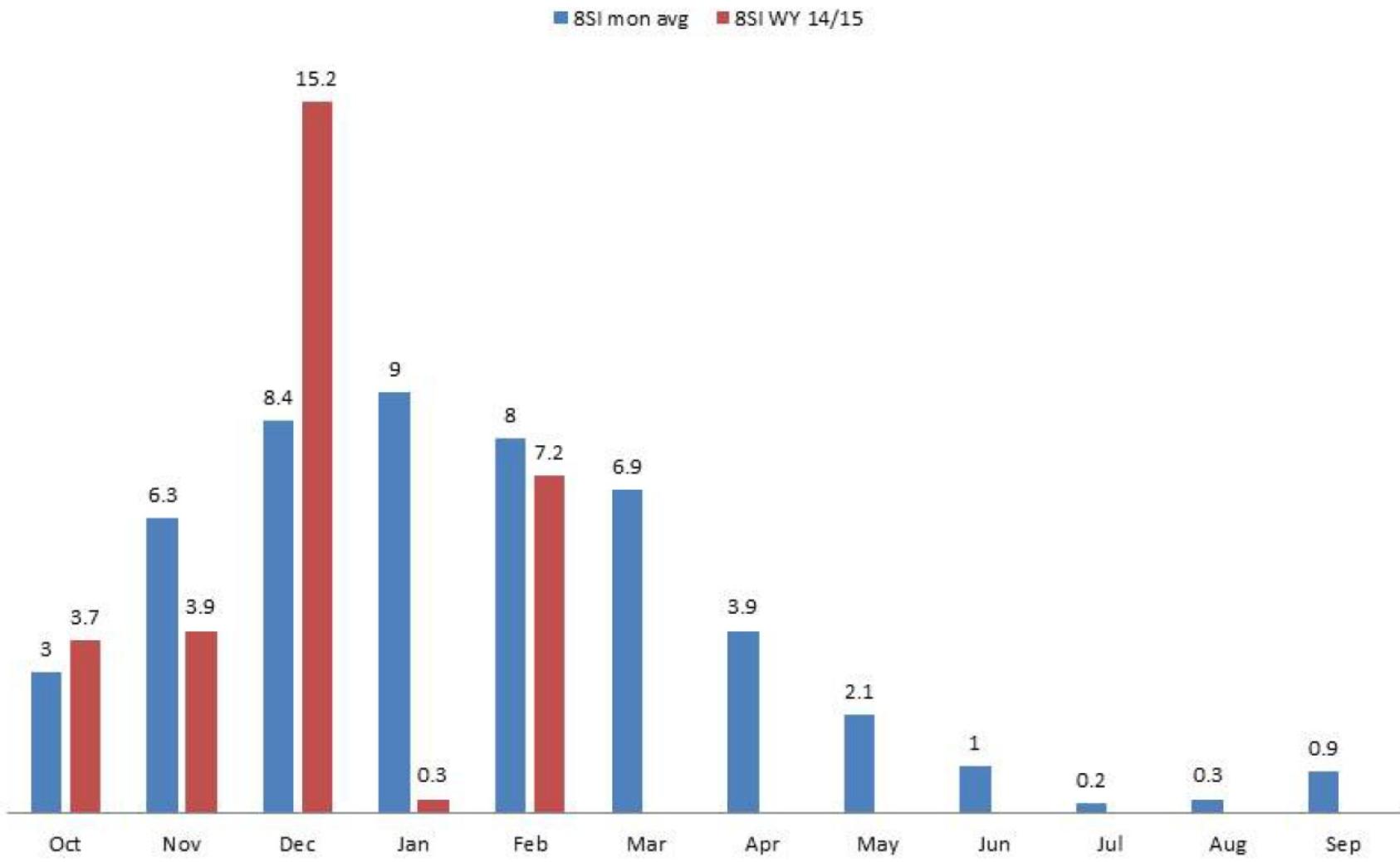
Summary By Section			
Section		2/17/2015	2/17/2014
NORTH	Number of Stations Reporting	29	27
	Average snow water equivalent	4"	3.4"
	Percent of April 1 Average	16%	12%
	Percent of normal for this date	20%	15%
CENTRAL	Number of Stations Reporting	44	44
	Average snow water equivalent	6"	7.8"
	Percent of April 1 Average	19%	26%
	Percent of normal for this date	24%	33%
SOUTH	Number of Stations Reporting	29	33
	Average snow water equivalent	4"	4.8"
	Percent of April 1 Average	16%	19%
	Percent of normal for this date	21%	25%
STATEWIDE	Statewide Average SWEQ	5"	5.7"
	Statewide Percent of April 1	17%	20%
	Statewide Percent of Normal	22%	26%

Overview of Current Conditions

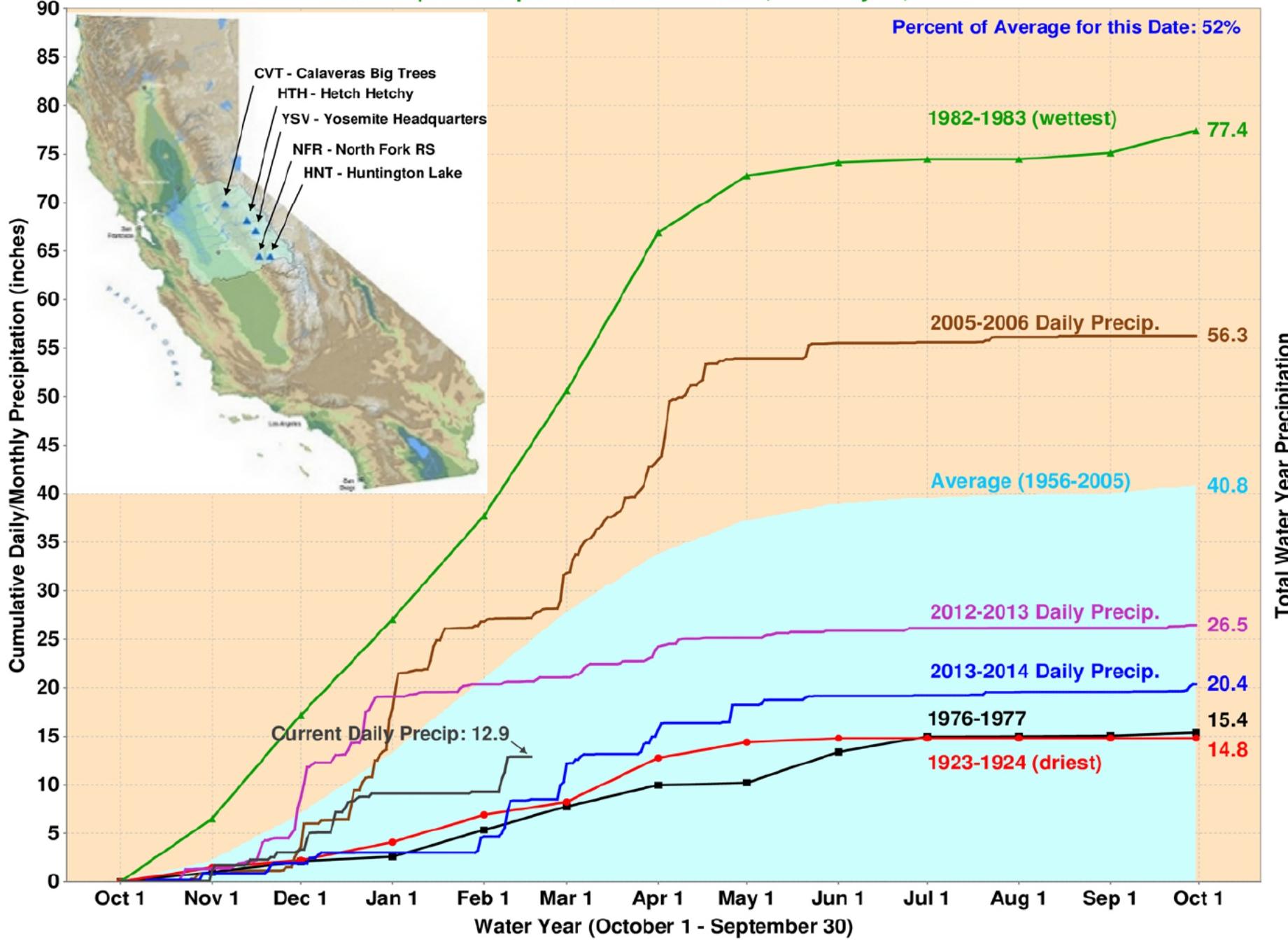
Northern Sierra Precipitation: 8-Station Index, February 17, 2015



Northern Sierra Eight Station Index

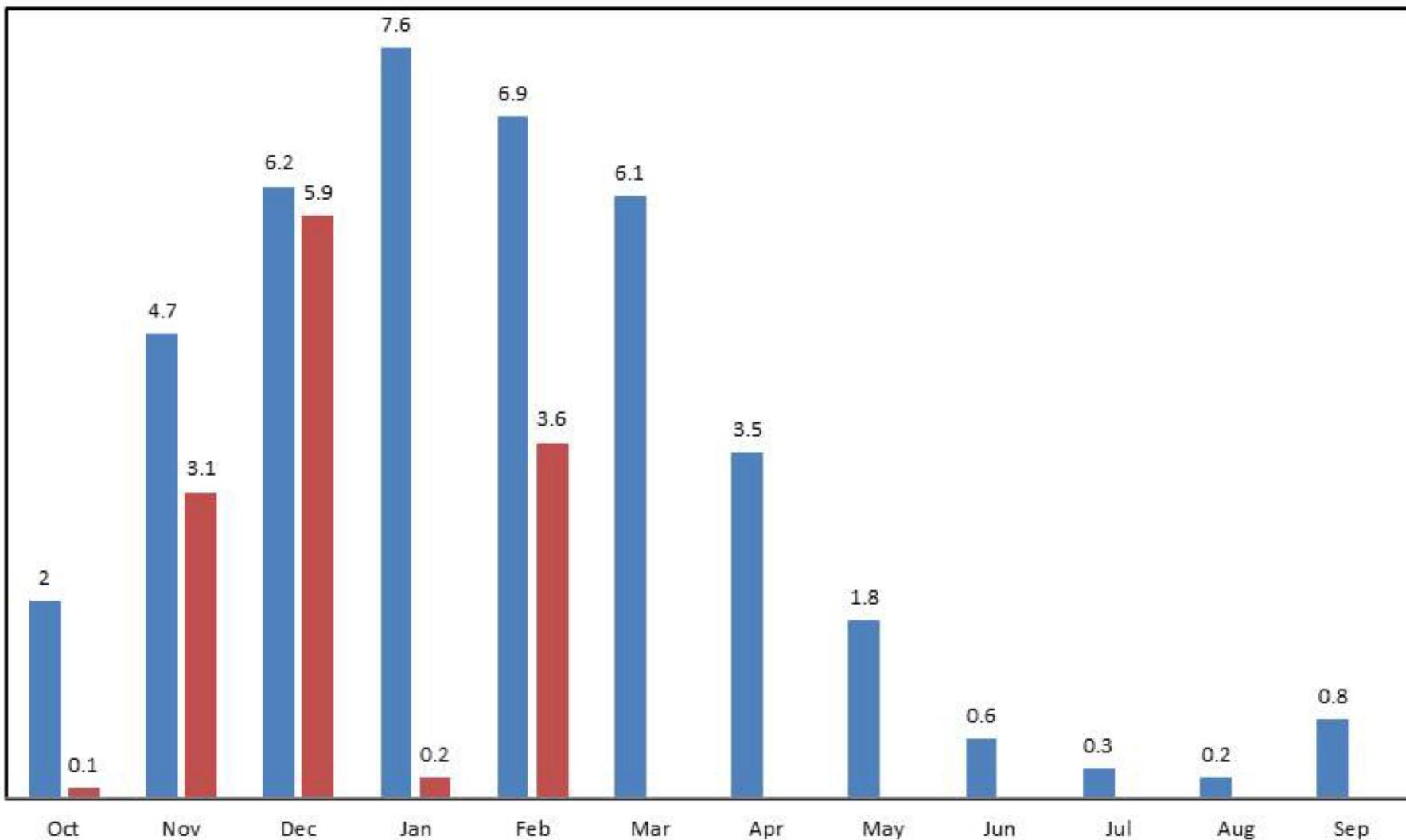


San Joaquin Precipitation: 5-Station Index, February 17, 2015

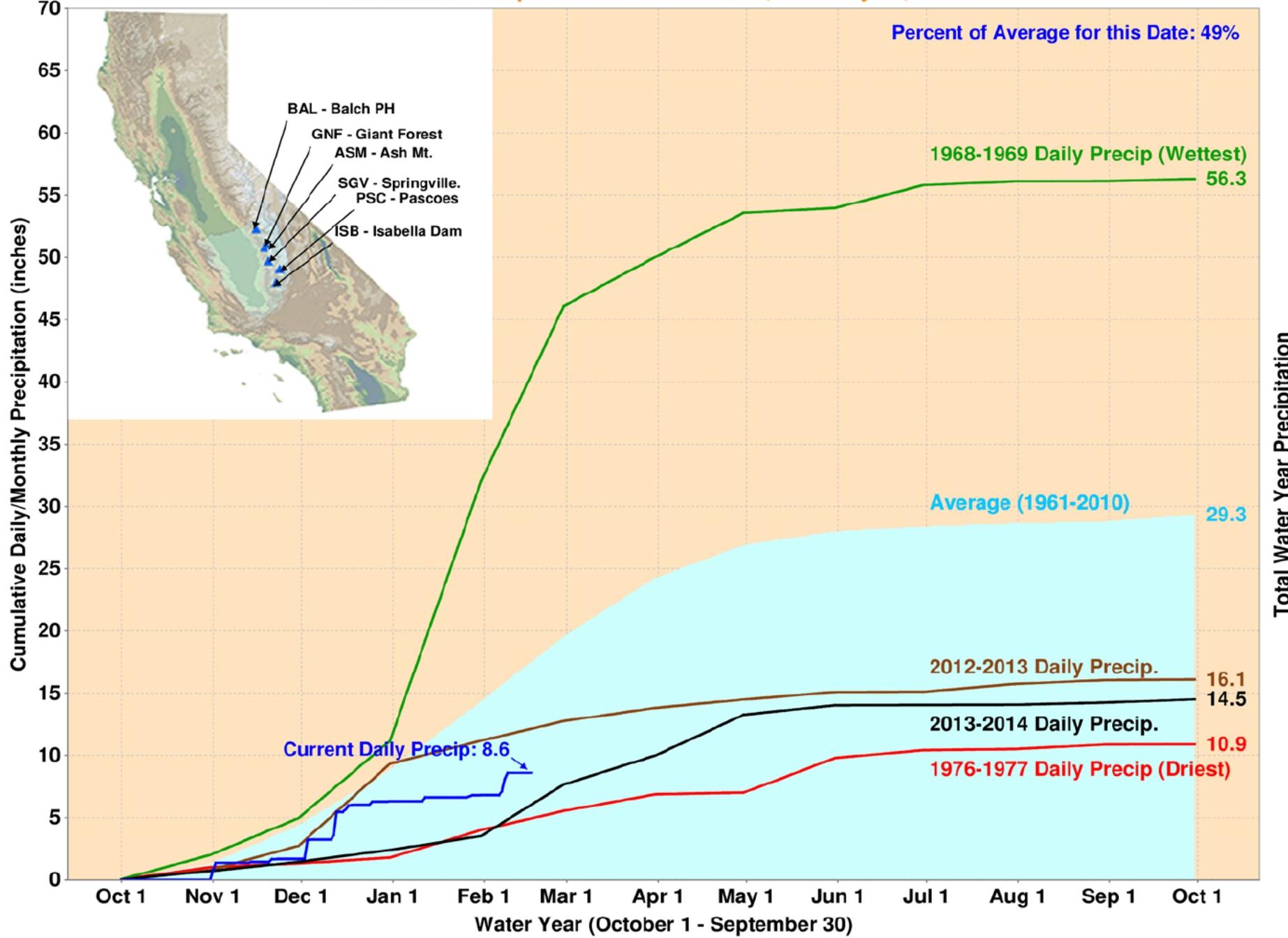


Central Sierra Five Station Index

■ SSI mon avg ■ SSI WY 14/15



Tulare Basin Precipitation: 6-Station Index, February 17, 2015

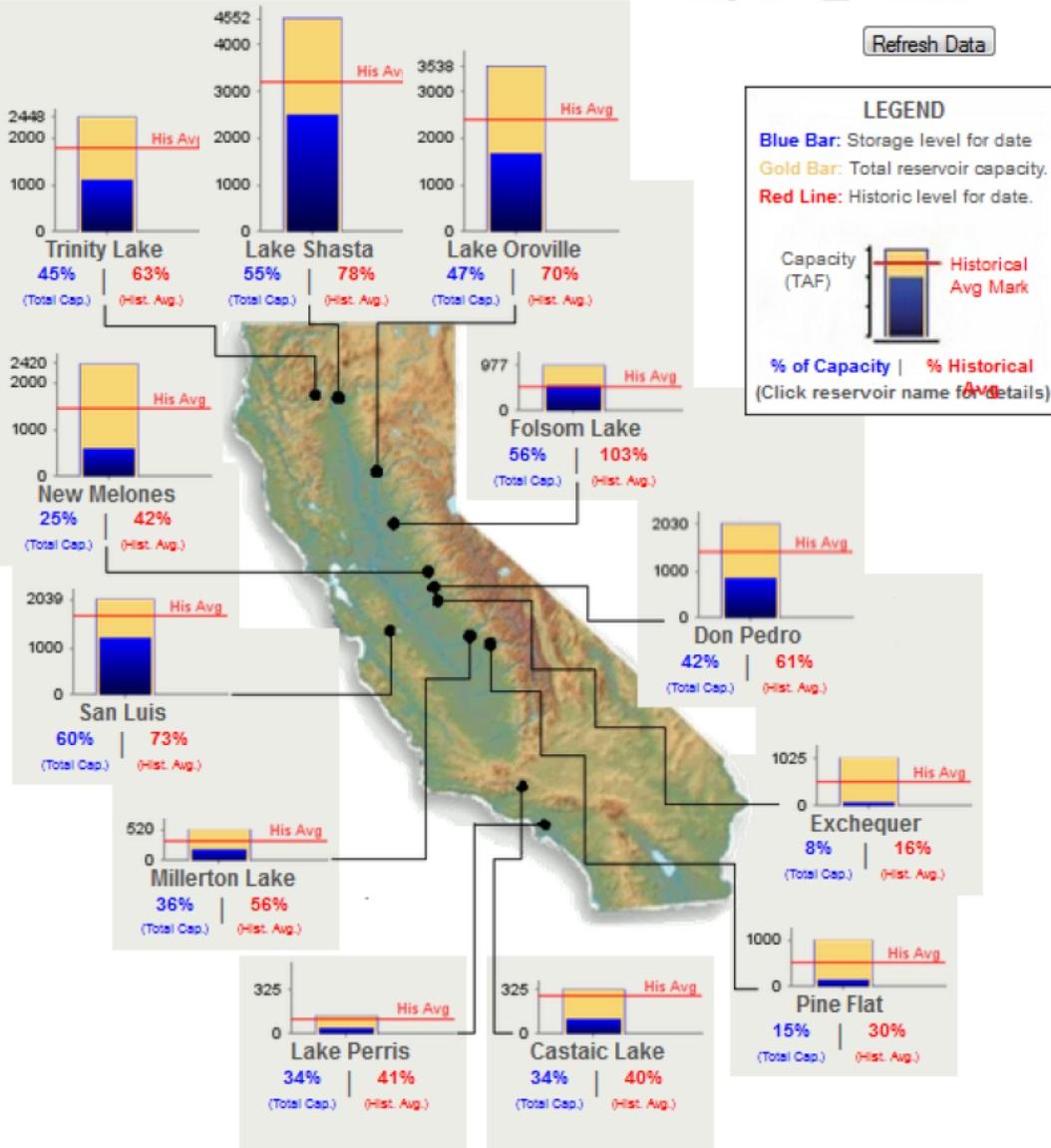


CONDITIONS FOR MAJOR RESERVOIRS: 16-FEB-2015

Data as of Midnight: 16-Feb-2015

Change Date: 16-Feb-2015

[Refresh Data](#)



	% Cap	% Avg
Trinity	45	63
Shasta	55	78
Oroville	47	70
Folsom	56	103
New Melones	25	42
San Luis	60	73

Click for printable version of current data.
NOTE: Perris lake has replaced Pyramid lake

Report Generated: 17-Feb-2015 9:12 AM

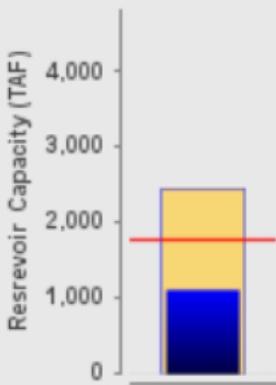


Reservoir Conditions - Trinity Lake



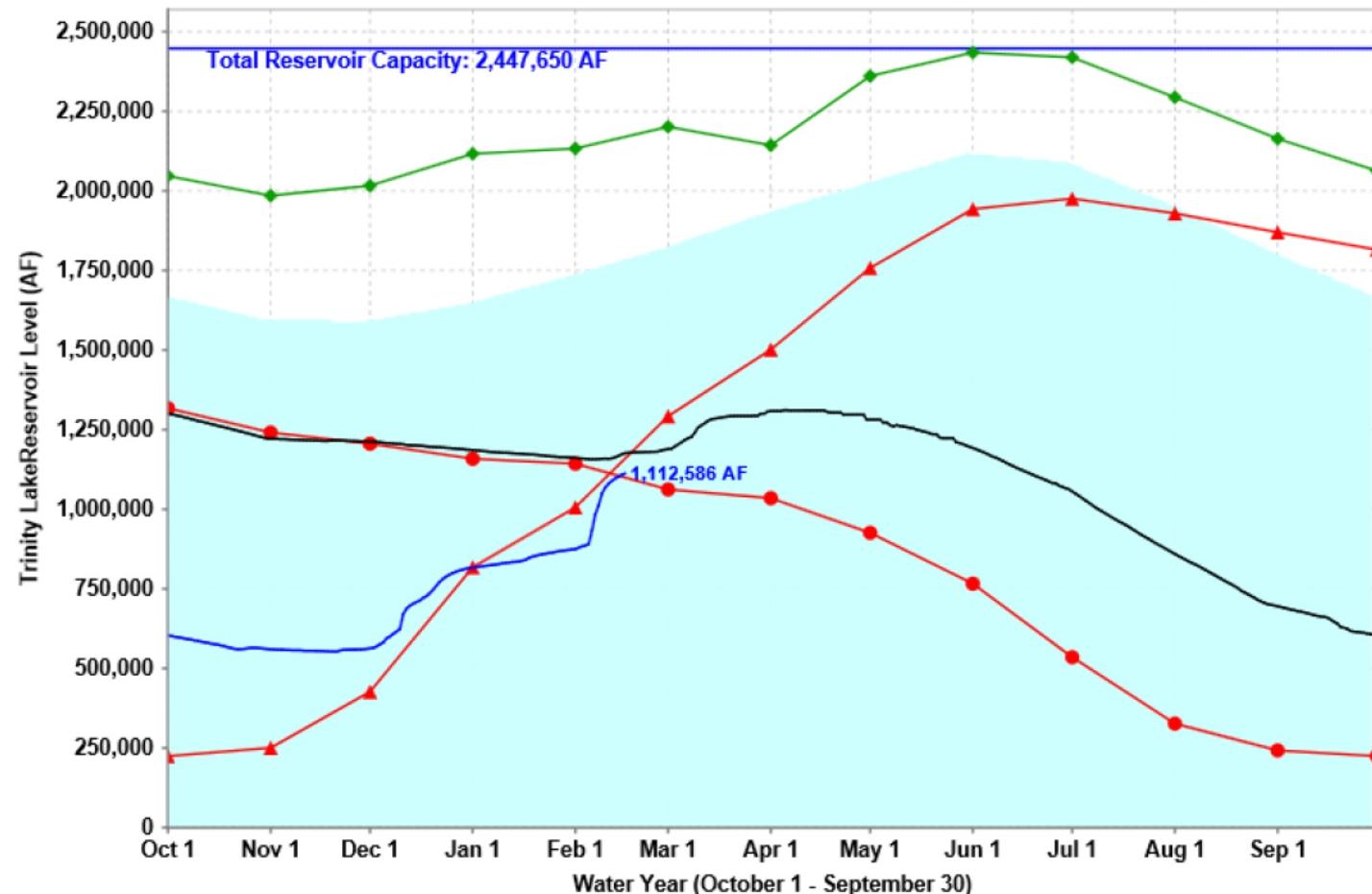
Trinity Lake Conditions

(as of Midnight - February 16, 2015)



45%
(Total Capacity) | 63%
(Historical Avg.)

Trinity Lake Levels: Various Past Water Years and Current Water Year, Ending At Midnight February 16, 2015



Historical Average — Total Reservoir Capacity ● 1976-1977 (Driest) ● 1977-1978 ● 1982-1983 (Wettest) — 2013-2014
— Current: 2014-2015

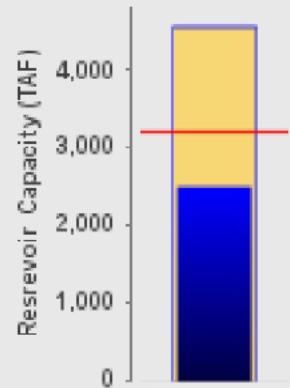


Reservoir Conditions - Shasta Reservoir



Lake Shasta Conditions

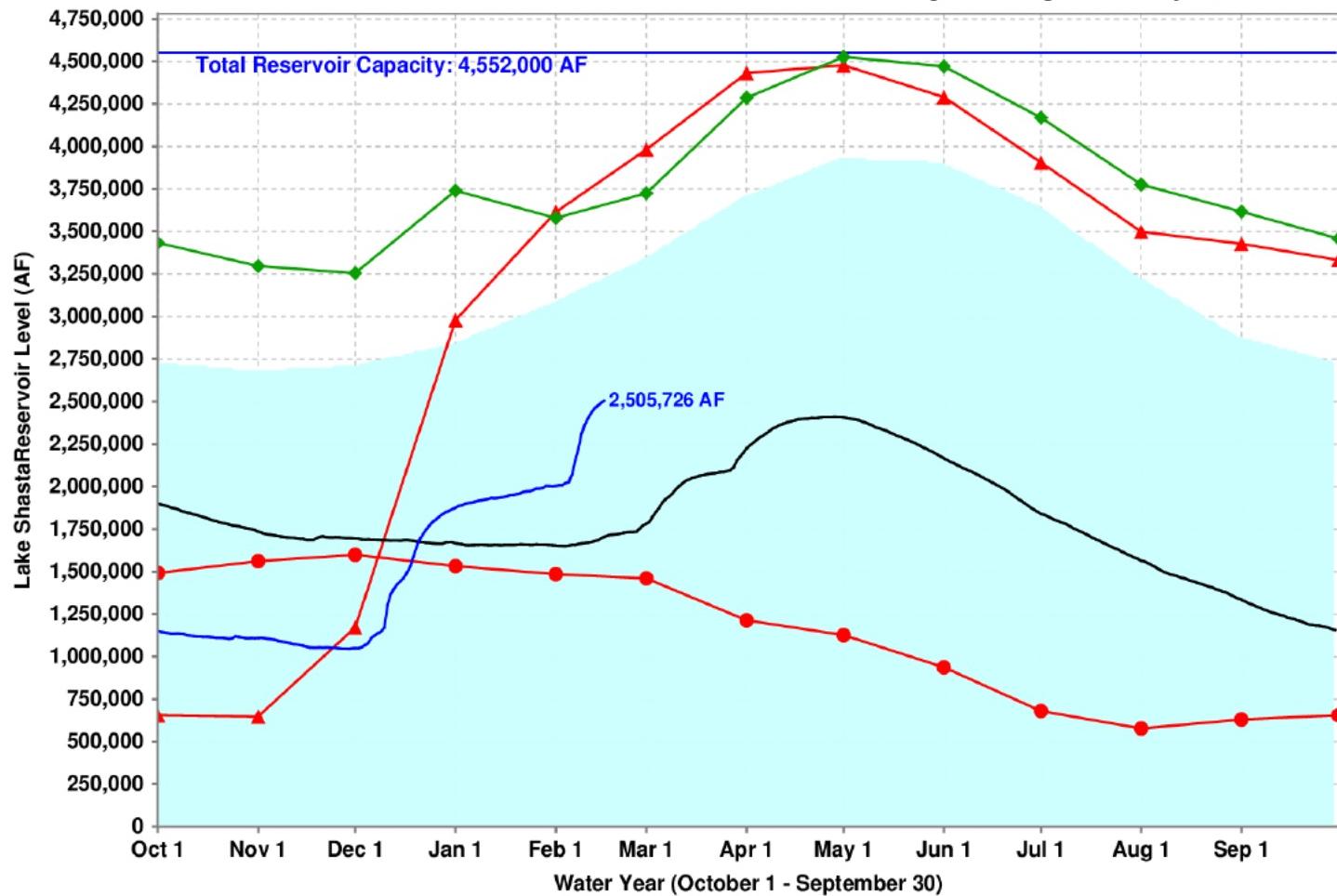
(as of Midnight - February 16, 2015)



Current Level: 2,505,726 AF

55% | 78%
(Total Capacity) (Historical Avg.)

Lake Shasta Levels: Various Past Water Years and Current Water Year, Ending At Midnight February 16, 2015



Historical Average — Total Reservoir Capacity ● 1976-1977 (Driest) ● 1977-1978 ● 1982-1983 (Wettest) — 2013-2014
— Current: 2014-2015

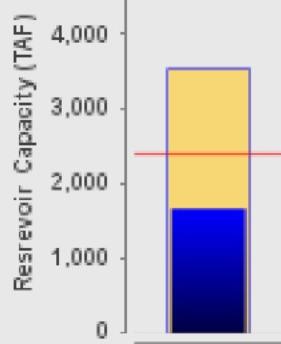


Reservoir Conditions - Lake Oroville



Lake Oroville Conditions

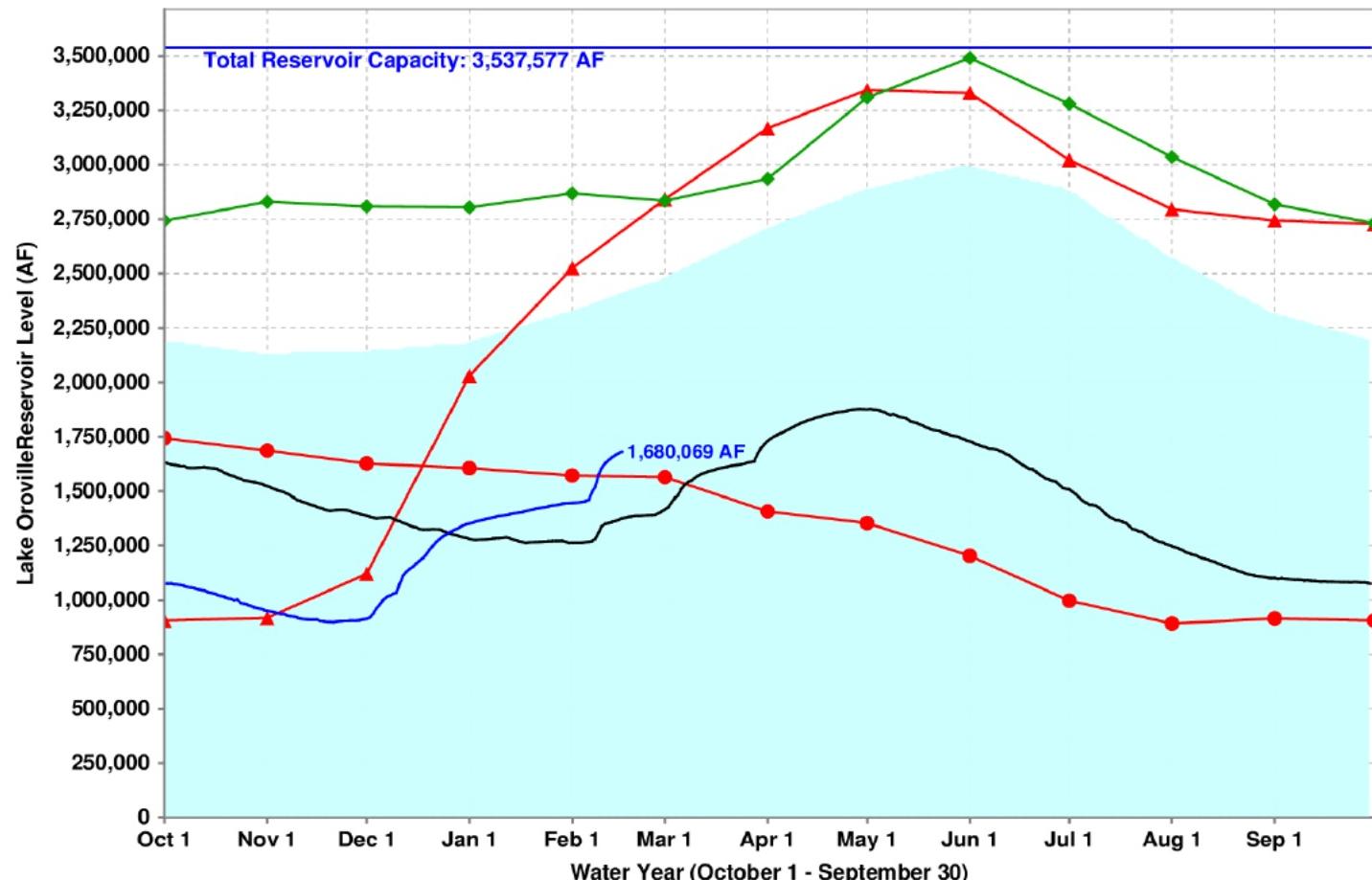
(as of Midnight - February 16, 2015)



Current Level: 1,680,069 AF

47%
(Total Capacity) | 70%
(Historical Avg.)

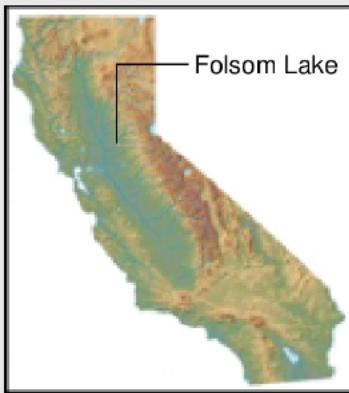
Lake Oroville Levels: Various Past Water Years and Current Water Year, Ending At Midnight February 16, 2015



Historical Average — Total Reservoir Capacity ● 1976-1977 (Driest) ★ 1977-1978 ♦ 1982-1983 (Wettest) — 2013-2014
— Current: 2014-2015

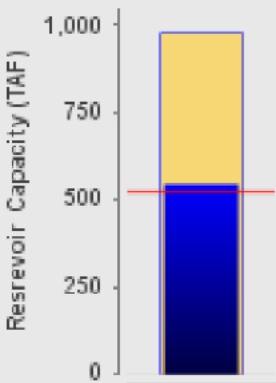


Reservoir Conditions - Folsom Lake



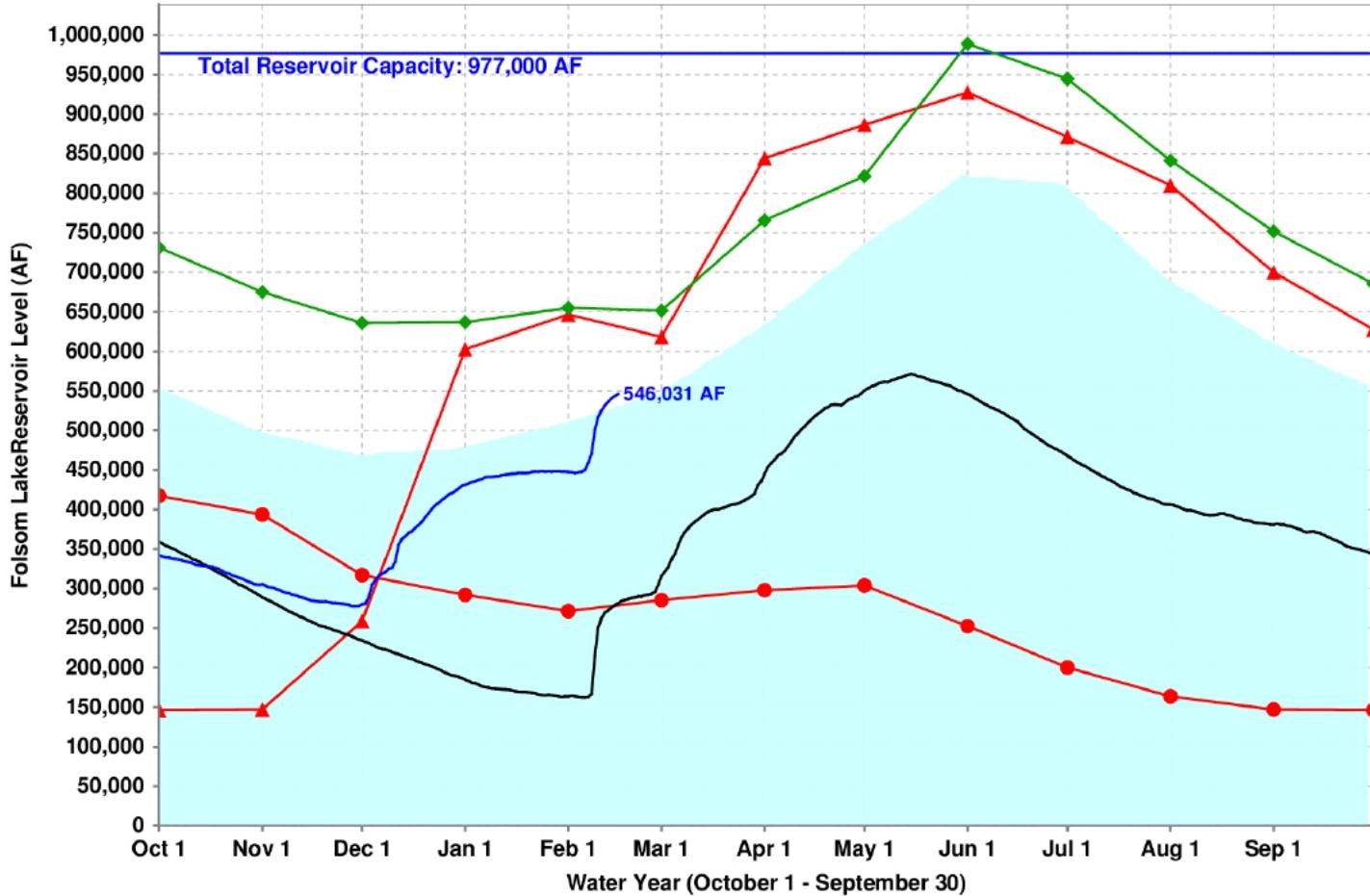
Folsom Lake Conditions

(as of Midnight - February 16, 2015)



Current Level: 546,031 AF
56%
(Total Capacity) | 103%
(Historical Avg.)

Folsom Lake Levels: Various Past Water Years and Current Water Year, Ending At Midnight February 16, 2015



Historical Average — Total Reservoir Capacity ● 1976-1977 (Driest) ▲ 1977-1978 ■ 1982-1983 (Wettest) — 2013-2014
— Current: 2014-2015

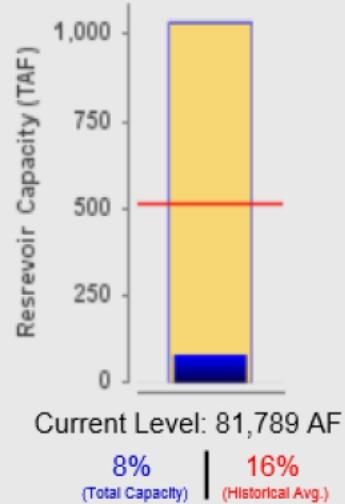


Reservoir Conditions - Exchequer

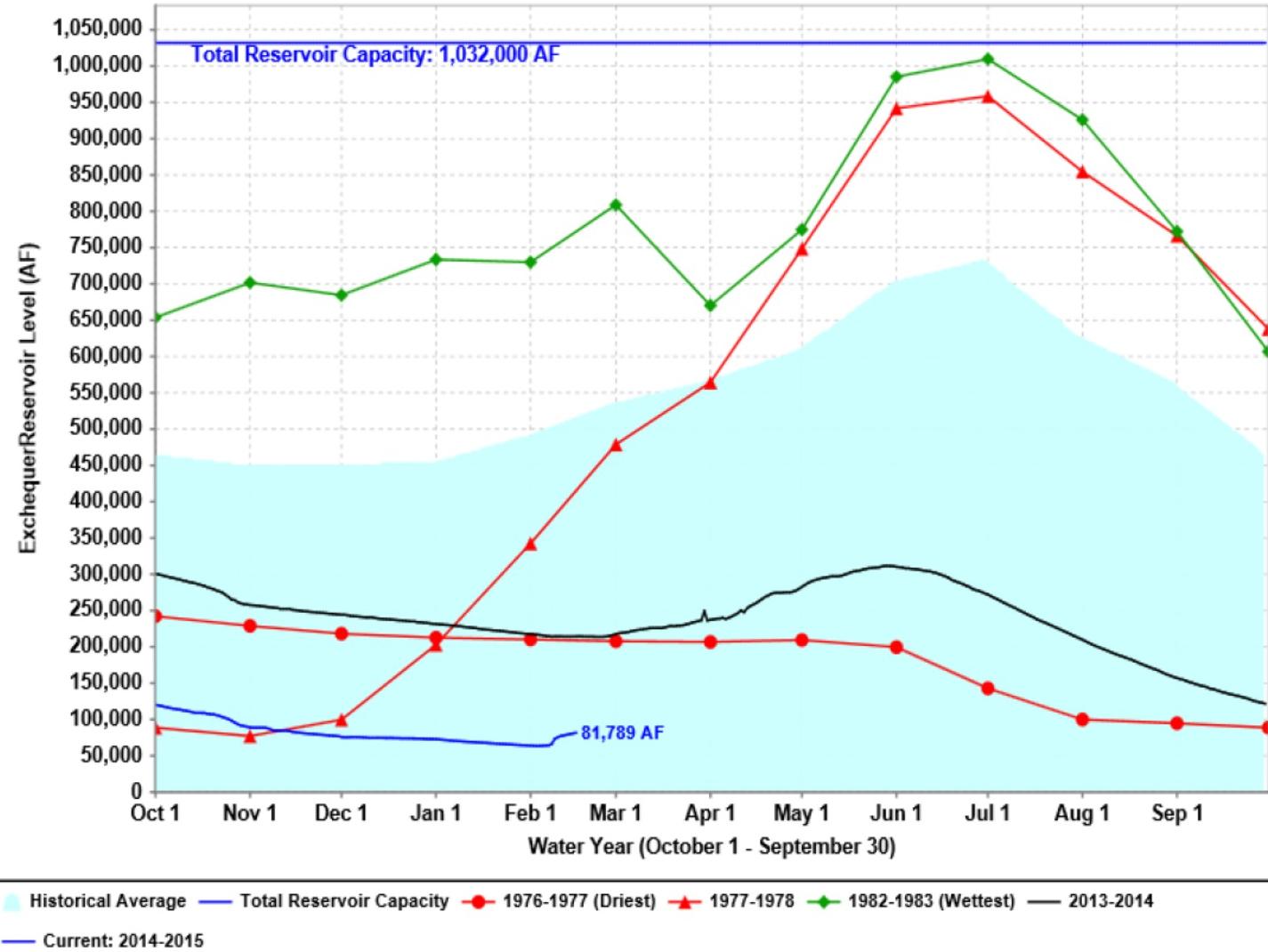


Exchequer Conditions

(as of Midnight - February 16, 2015)



Exchequer Levels: Various Past Water Years and Current Water Year, Ending At Midnight February 16, 2015



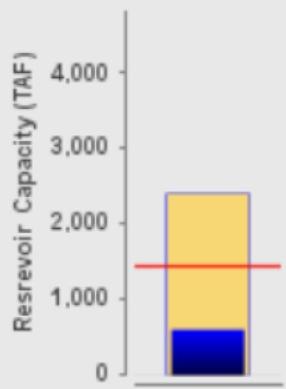


Reservoir Conditions - New Melones



New Melones Conditions

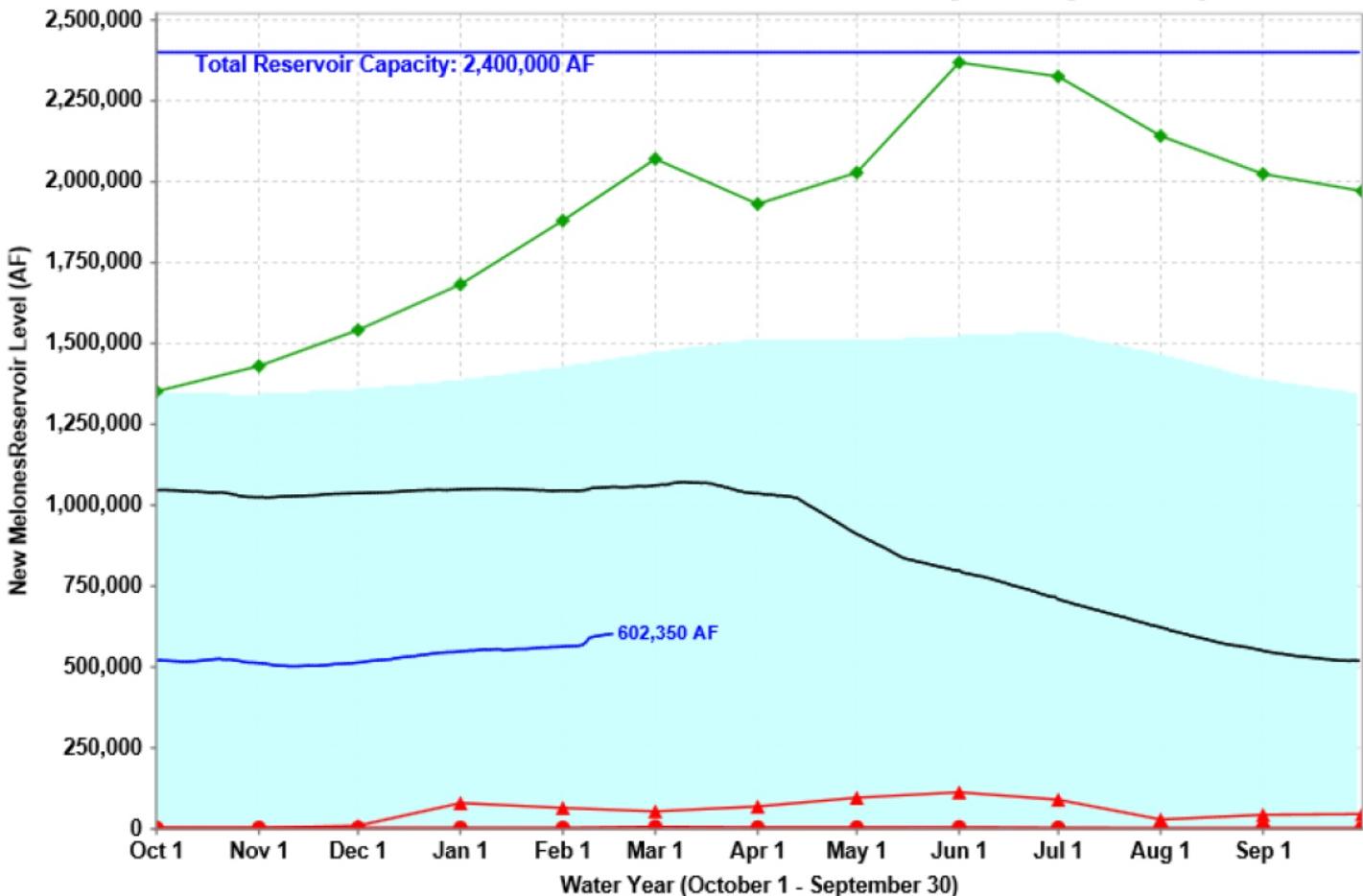
(as of Midnight - February 16, 2015)



Current Level: 602,350 AF

25%
(Total Capacity) | 42%
(Historical Avg.)

New Melones Levels: Various Past Water Years and Current Water Year, Ending At Midnight February 16, 2015



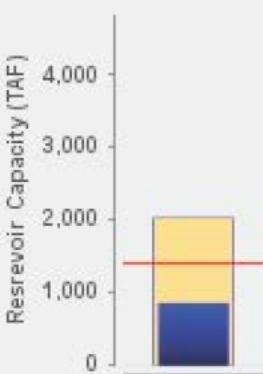
Historical Average — Total Reservoir Capacity ● 1976-1977 (Driest) ▲ 1977-1978 ■ 1982-1983 (Wettest) — 2013-2014
— Current: 2014-2015



Reservoir Conditions - Don Pedro



Don Pedro Conditions (as of Midnight - February 16, 2015)



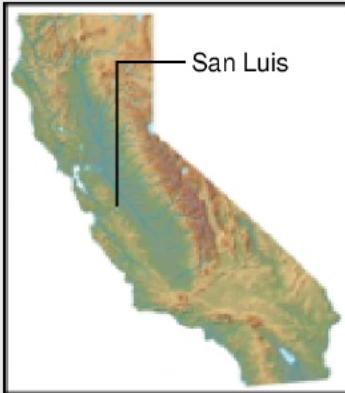
Don Pedro Levels: Various Past Water Years and Current Water Year, Ending At Midnight February 16, 2015



Historical Average — Total Reservoir Capacity: ● 1976-1977 (Driest) ▲ 1977-1978 ■ 1982-1983 (Wettest) — 2013-2014
— Current: 2014-2015

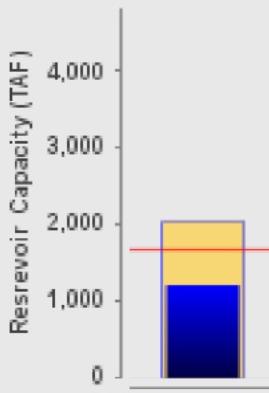


Reservoir Conditions - San Luis



San Luis Conditions

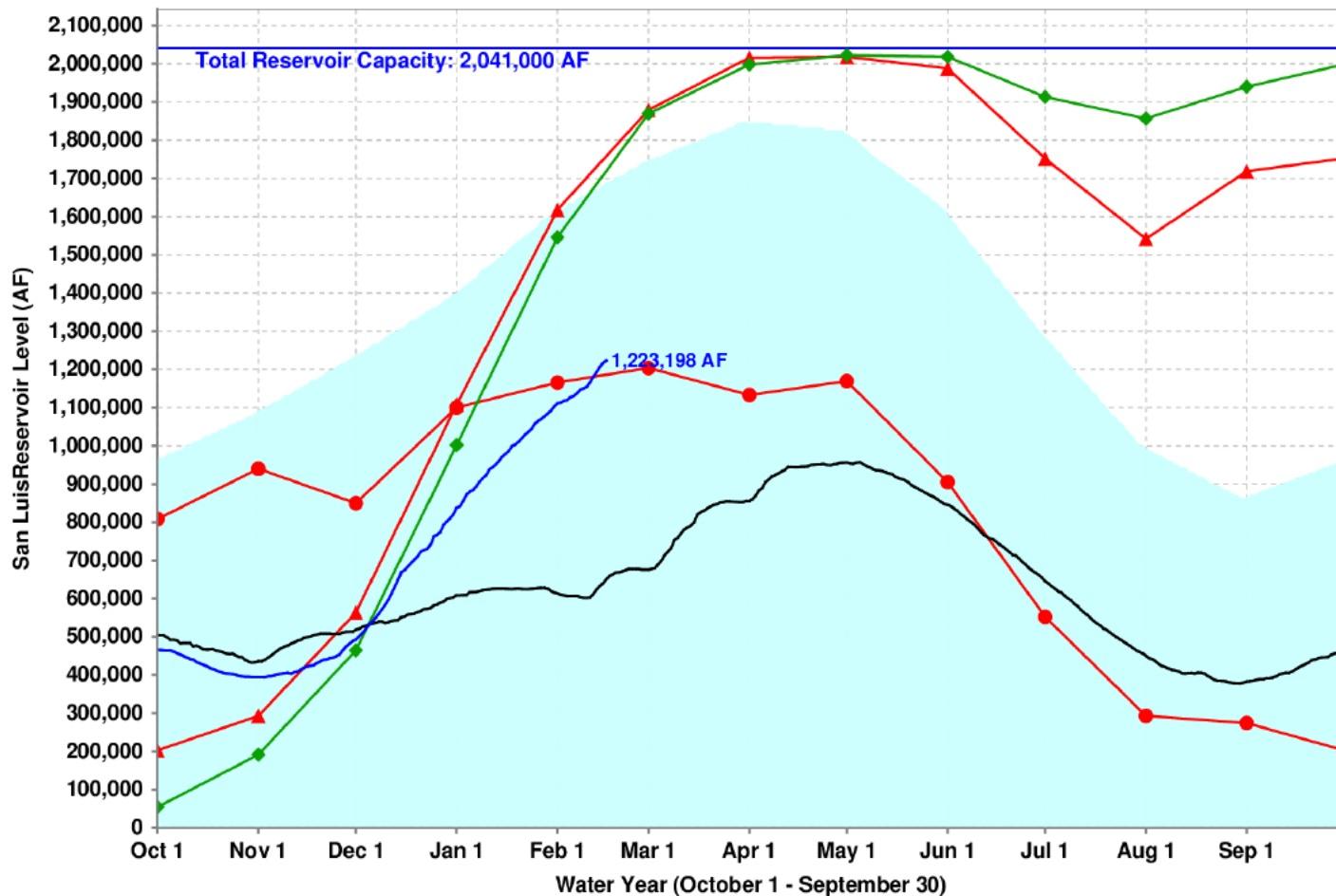
(as of Midnight - February 16, 2015)



Current Level: 1,223,198 AF

60%
(Total Capacity) | 73%
(Historical Avg.)

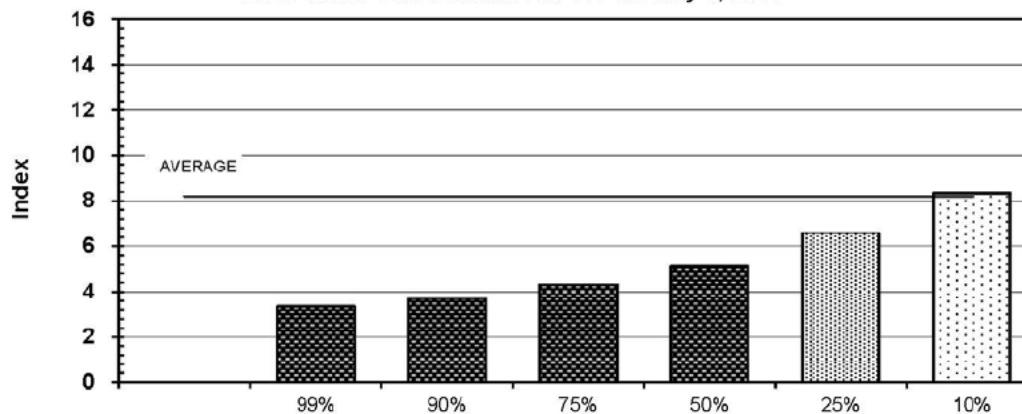
San Luis Levels: Various Past Water Years and Current Water Year, Ending At Midnight February 16, 2015



Historical Average Total Reservoir Capacity 1976-1977 (Driest) 1977-1978 1982-1983 (Wettest) 2013-2014
Current: 2014-2015

Temporary Urgency Change Petition

SACRAMENTO VALLEY
WATER YEAR TYPE INDEX (40-30-30)
2015 Water Year Forecast as of February 1, 2015



Date of Forecast	99%	90%	75%	50%	25%	10%
December 1, 2014	2.7	3.5	4.3	5.6	7.2	8.8
January 1, 2015	4.0	4.9	5.8	6.7	8.2	9.6
February 1, 2015	3.3	3.7	4.3	5.1	6.6	8.3
March 1, 2015						
April 1, 2015						
May 1, 2015						

Water Year Index based on flow in million acre feet

$$\begin{aligned} \text{Index} = & 0.4 * \text{Current Apr-Jul Runoff }^{(1)} \\ & + 0.3 * \text{Current Oct-Mar Runoff }^{(1)} \\ & + 0.3 * \text{Previous Year's Index }^{(2)} \end{aligned}$$

Notes:

(1) Runoff is the sum of unimpaired flow in million acre-feet at:

Sacramento River above Bend Bridge
 Feather River at Oroville (aka inflow to Lake Oroville)
 Yuba River near Smartsville

American River below Folsom Lake

(2) Maximum 10.0 for previous year index term

Previous Water Year Indices:

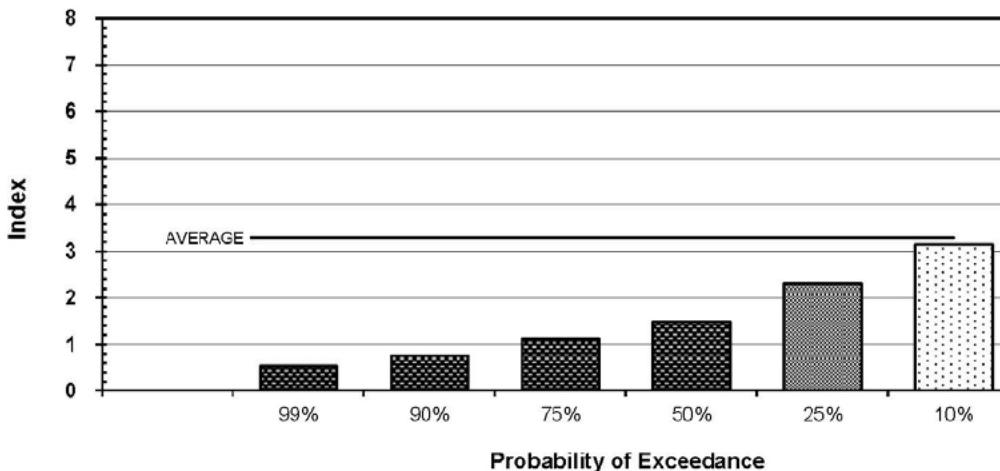
2014 =	4.1	50% of avg.
1977 (Min) =	3.1	38% of avg.
1983 (Max) =	15.3	186% of avg.
1961-2010 average =	8.2	

Year Classification

TYPE	INDEX
Wet	
Above Normal	9.2
Normal	7.8
Below Normal	6.5
Dry	5.4
Critical	

RESPONSE

SAN JOAQUIN VALLEY
WATER YEAR TYPE INDEX (60-20-20)
2015 Water Year Forecast as of February 1, 2015



Date of Forecast	99%	90%	75%	50%	25%	10%
December 1, 2014	0.7	1.0	1.4	2.0	2.8	3.8
January 1, 2015	0.8	1.1	1.4	2.1	2.7	3.6
February 1, 2015	0.5	0.8	1.1	1.5	2.3	3.1

Water Year Index based on flow in million acre feet

$$\begin{aligned} \text{Index} = & 0.6 * \text{Current Apr-Jul Runoff }^{(1)} \\ & + 0.2 * \text{Current Oct-Mar Runoff }^{(1)} \\ & + 0.2 * \text{Previous Year's Index }^{(2)} \end{aligned}$$

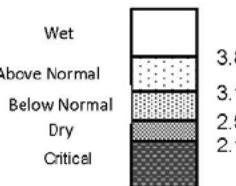
TYPE	INDEX
------	-------

Notes:

(1) Runoff is the sum of unimpaired flow in million acre-feet at:
Stanislaus River below Goodwin Reservoir (aka inflow to New Melones Res)
Tuolumne River below La Grange (aka inflow to New Don Pedro Reservoir)

Merced River below Merced Falls (aka inflow to Lake McClure)
San Joaquin River inflow to Millerton Lake

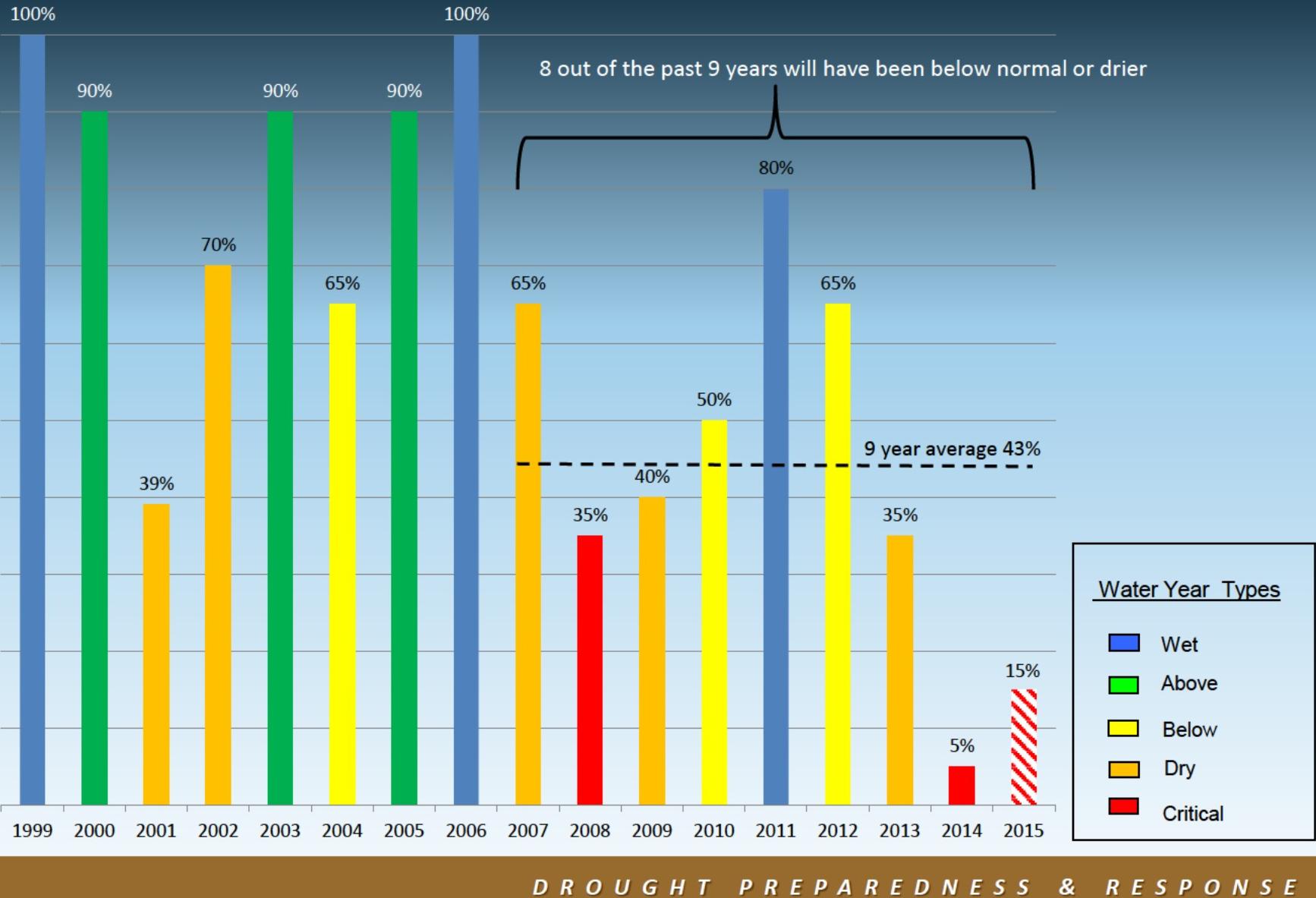
(2) Maximum 4.5 for previous year index term



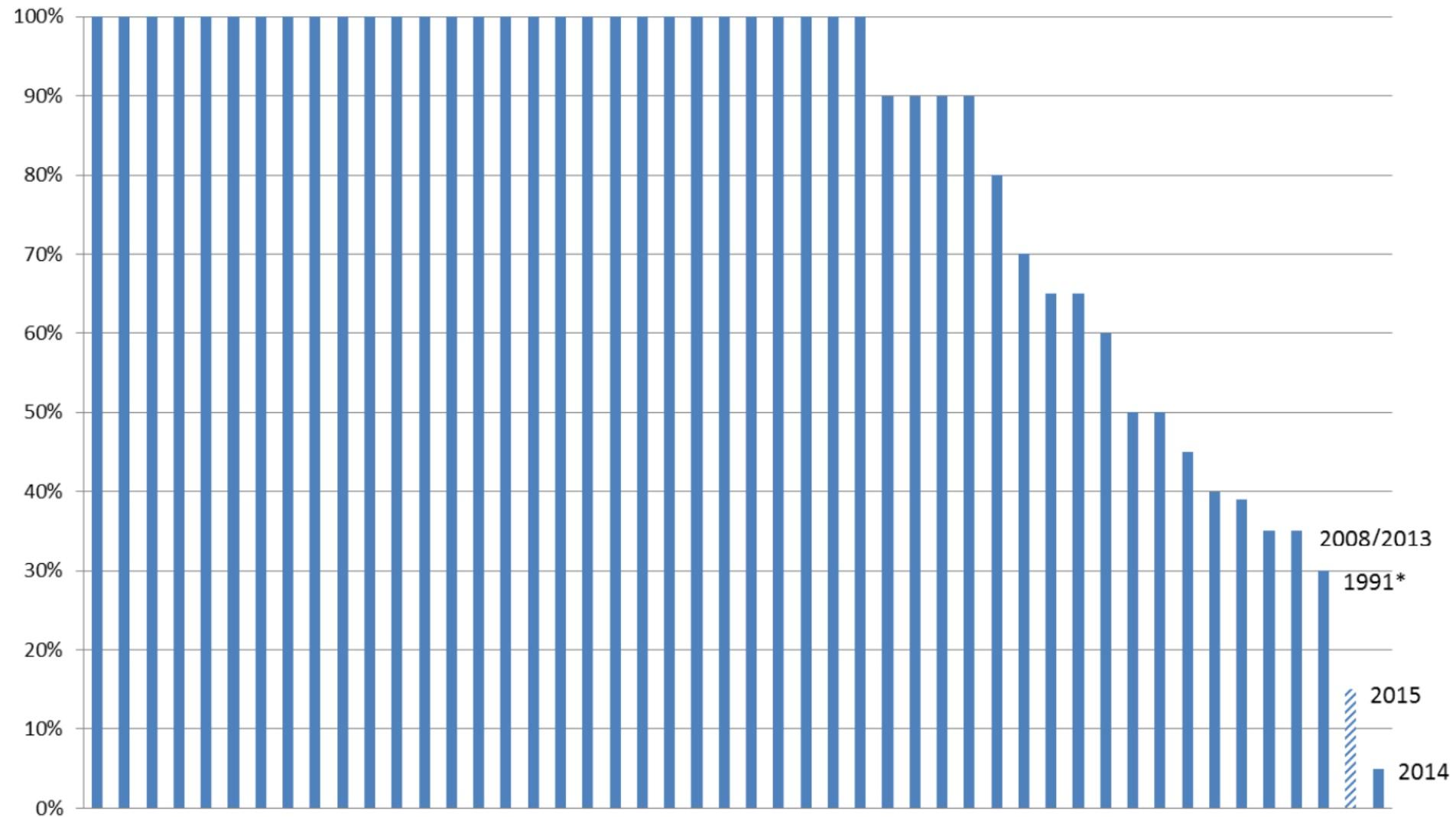
Previous Water Year Indices:

2014 =	1.2	35% of avg.
1977 (Min) =	0.8	26% of avg.
1983 (Max) =	7.2	219% of avg.
1961-2010 average =	3.3	

SWP Allocation by Year Type



SWP Allocation (sorted 1968 - 2015)



*0% allocation for ag in 1991

Purposes of January 23 TUCP

- 1) Conserve Upstream Storage**
- 2) Manage Delta Salinity**
- 3) Lessen Economic Losses**

D-1641 Bay-Delta Standards

With Likely 2015 TUCP Requests

CRITERIA	Feb 2015	Mar 2015	Apr 2015	May 2015	Jun 2015	Jul 2015	Aug 2015	Sep 2015
Jan 1 - 50% Hydrology								
• Outflow Spring X2								
Minimum Outflow - mon.		Near-Term TUCP						
• River Flows @ Rio Vista - min. mon. avg.								
@ Vernalis: Base -min. mon. avg.		Near-Term TUCP	710 cfs	710 cfs	710 cfs			
Pulse objective			T.B.D.					
• Delta Cross Channel Gates	N-T TUCP							
• Salinity EC - Emmaton								
Jan 1 - 90% Hydrology								
• Outflow Spring X2			7100 cfs	7100 cfs	7100 cfs			
Minimum Outflow - mon.		Near-Term TUCP						
• River Flows @ Rio Vista - min. mon. avg.								2500 cfs
@ Vernalis: Base -min. mon. avg.		Near-Term TUCP	500 cfs		500 cfs			
Pulse objective			T.B.D.					
• Delta Cross Channel Gates	N-T TUCP							
• Salinity EC - Emmaton				Requirement Moved to Three Mile Slough				
Jan 1 - 99% Hydrology								
• Outflow Spring X2								
Minimum Outflow - mon.		Near-Term TUCP	4000 cfs	4000 cfs	Suspended			
• River Flows @ Rio Vista - min. mon. avg.								Suspended
@ Vernalis: Base -min. mon. avg.		Near-Term TUCP	T.B.D.		T.B.D.			
Pulse objective			T.B.D.					
• Delta Cross Channel Gates	N-T TUCP		Conditional DCC Opening					
• Emergency Drought Barriers				Construction			Operational	
• Salinity EC - Emmaton					Suspended			

Specifics of January 23rd TUCP

- Item 1: NDOI – 4000 cfs
- Item 2: SJR Flow – 500 cfs
- Item 3: DCC Gate – Conditional Opening
- Item 4: Export of Natural or Abandoned Flow

Export of Natural and Abandoned Flows

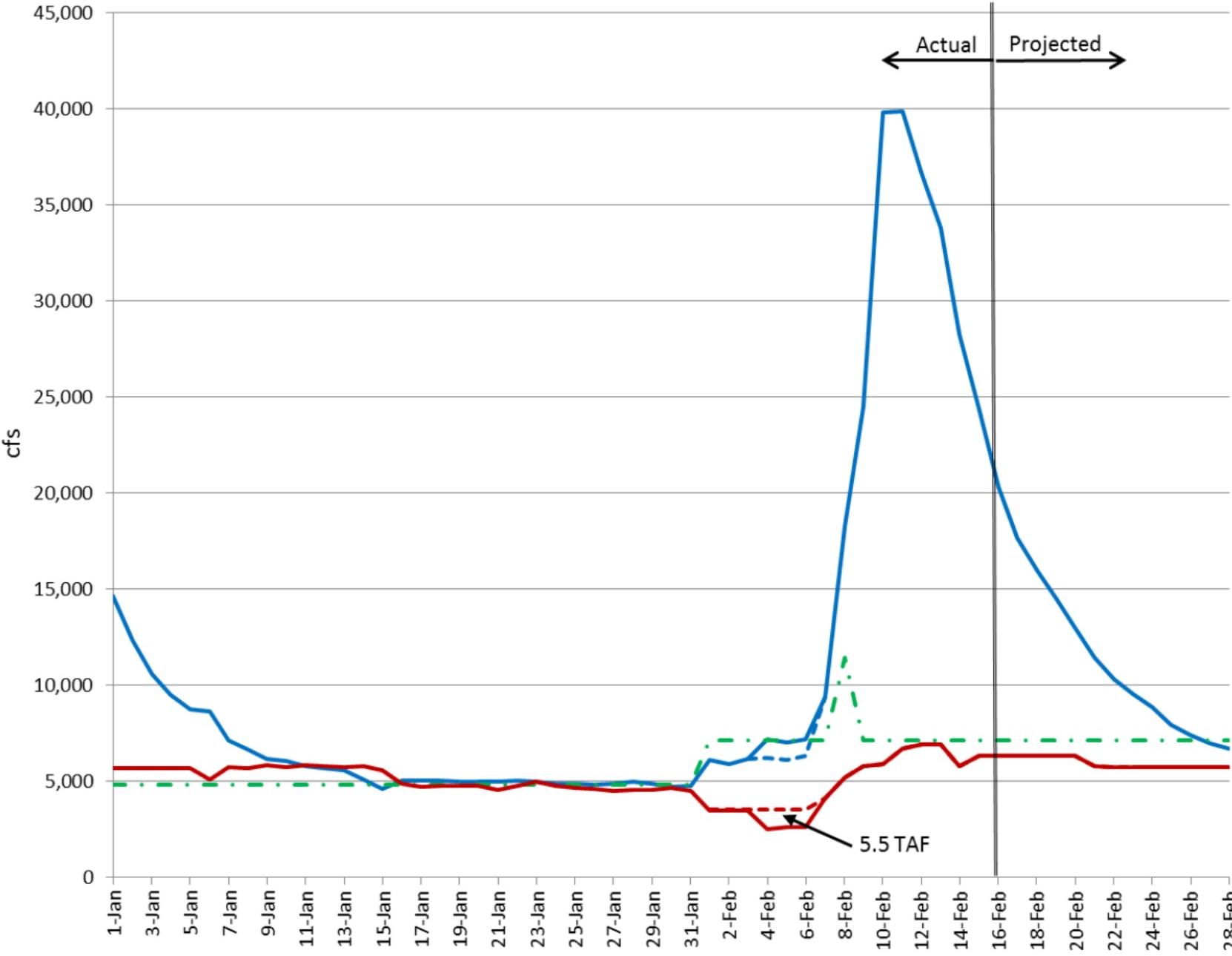
- > NDOI 7100 cfs (Approved TUCP 2014 and 2015)
- 5500 cfs > NDOI > 7100 cfs (Proposed TUCP 2015)

Fishery Protections

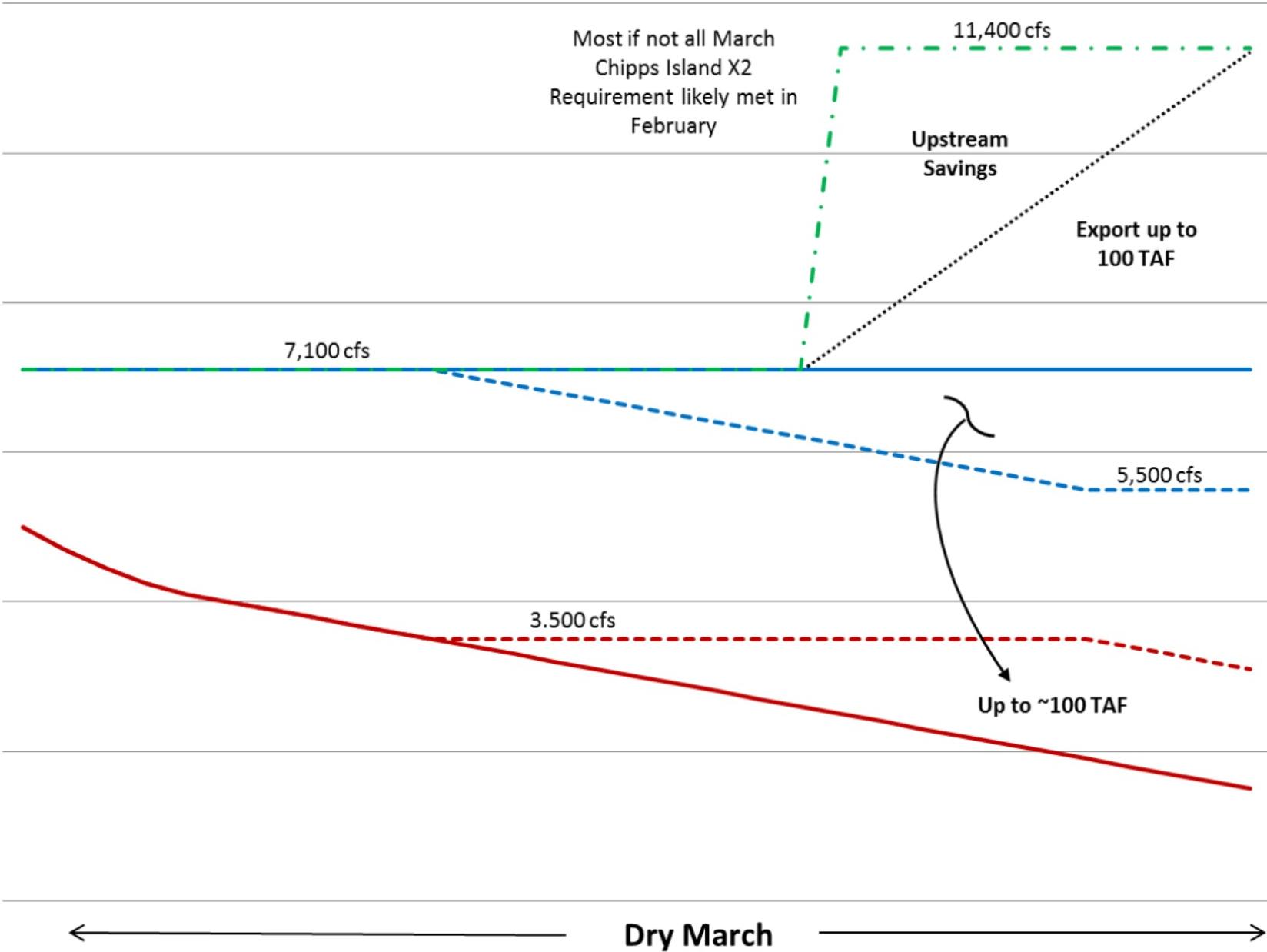
	February		March	
	E/I	OMR*	E/I	OMR*
>7100 cfs	45%	-5000 cfs	35%	-5000 cfs
Intermediate Step	20% - 35%	-3200 cfs	20% - 35%	-3200 cfs

* Exports Subject to More Protective OMR under BiOps

— NDOI - - - Proposed NDOI - · - D-1641 NDOI Requirement — Exports - - - Proposed Export



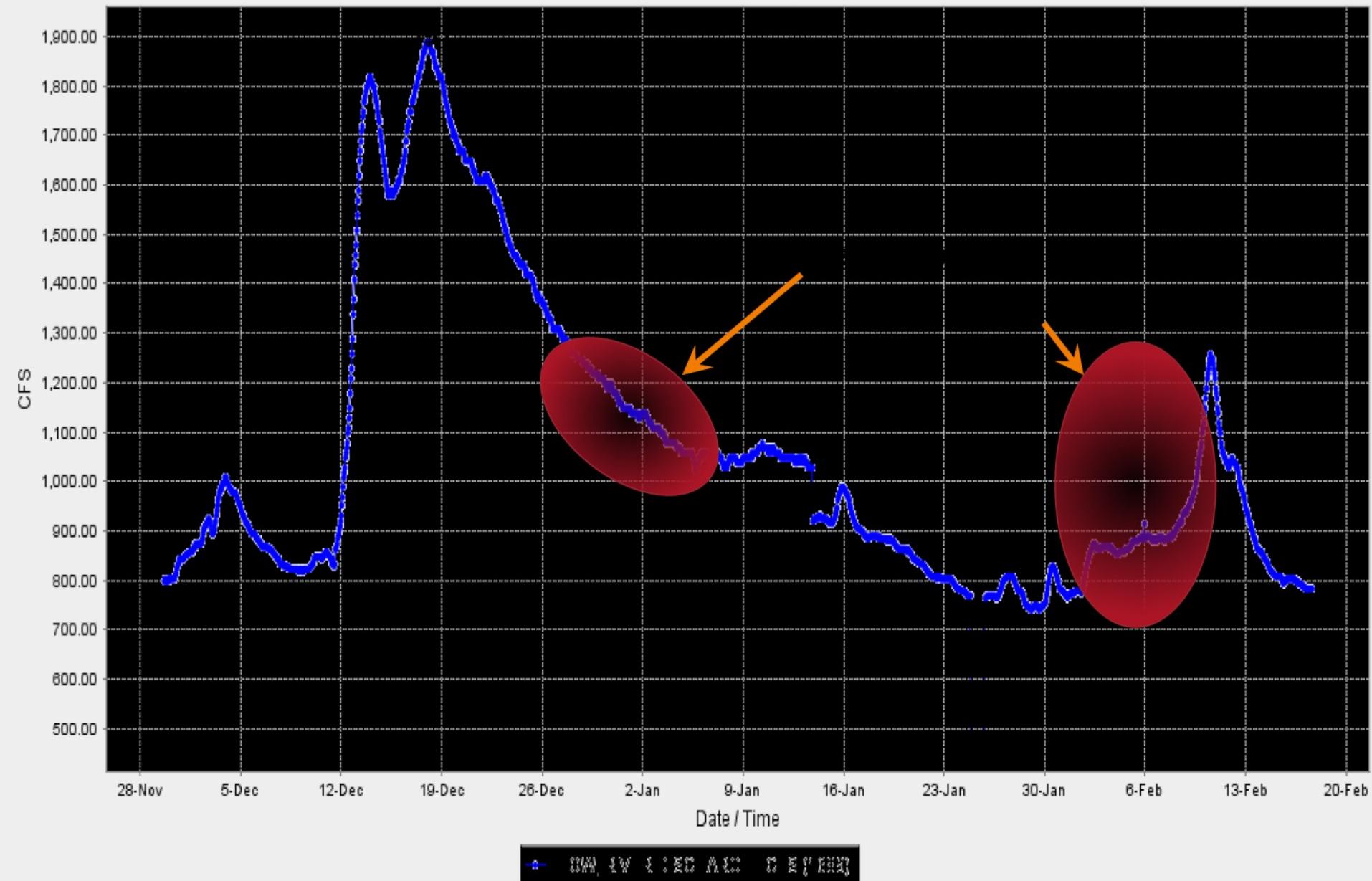
— TUCP NDOI - - - Proposed NDOI - - - D-1641 Requirement — TUCP Exports - - - Proposed Export



SAN JOAQUIN RIVER NEAR VERNALIS (VNS)

Date from 11/29/2014 14:59 through 02/17/2015 14:59 Duration : 80 days

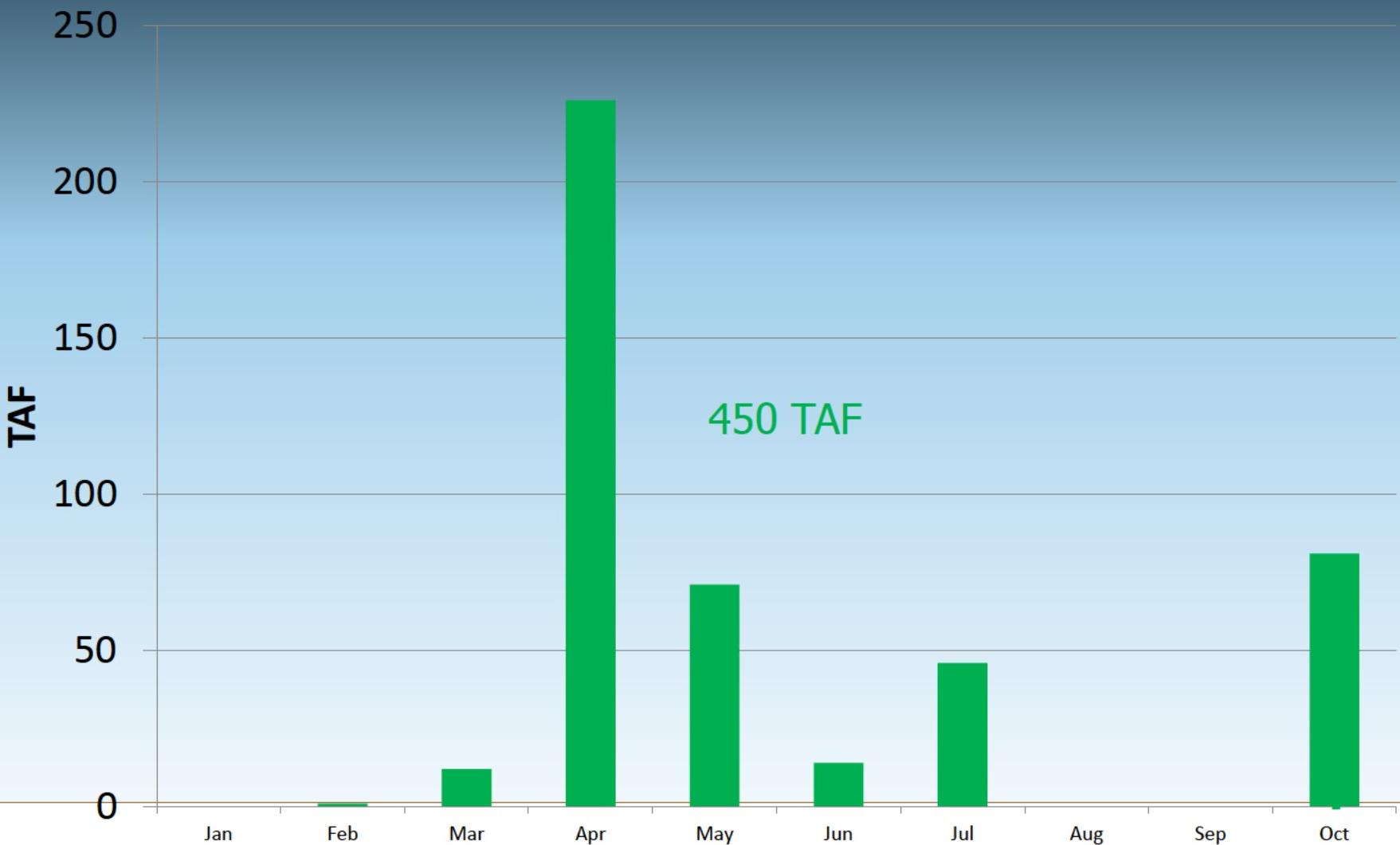
Max of period : (12/18/2014 03:00, 1890.0) Min of period: (01/25/2015 10:00, 484.0)



2014 Review

D R O U G H T P R E P A R E D N E S S & R E S P O N S E

Conserved Water Under 2014 TUCP Order (SWP & CVP)

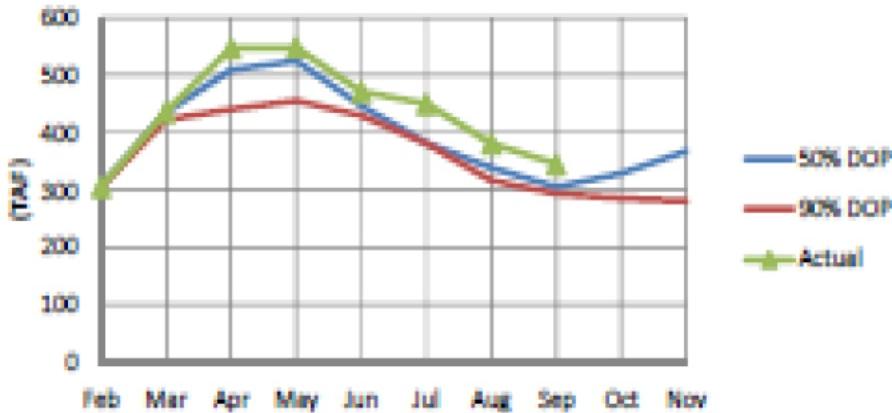


April 2014 Drought Operations Plan

Storage Tracking

Folsom Lake

(end-of-month storage)



Lake Shasta

(end-of-month storage)



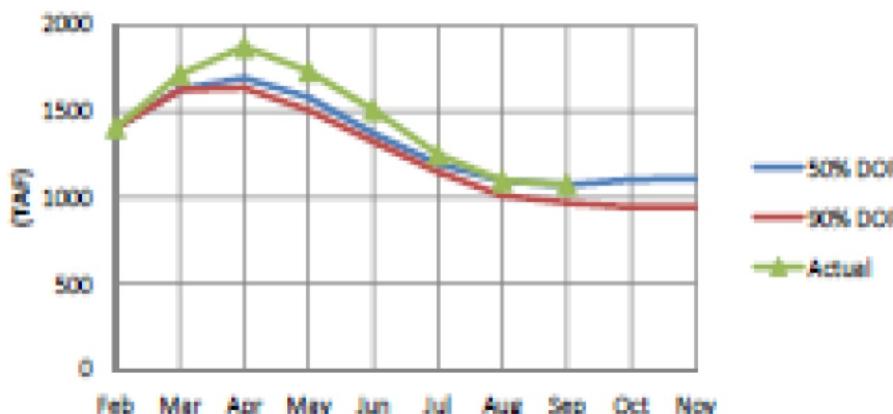
New Melones

(end-of-month storage)



Lake Oroville

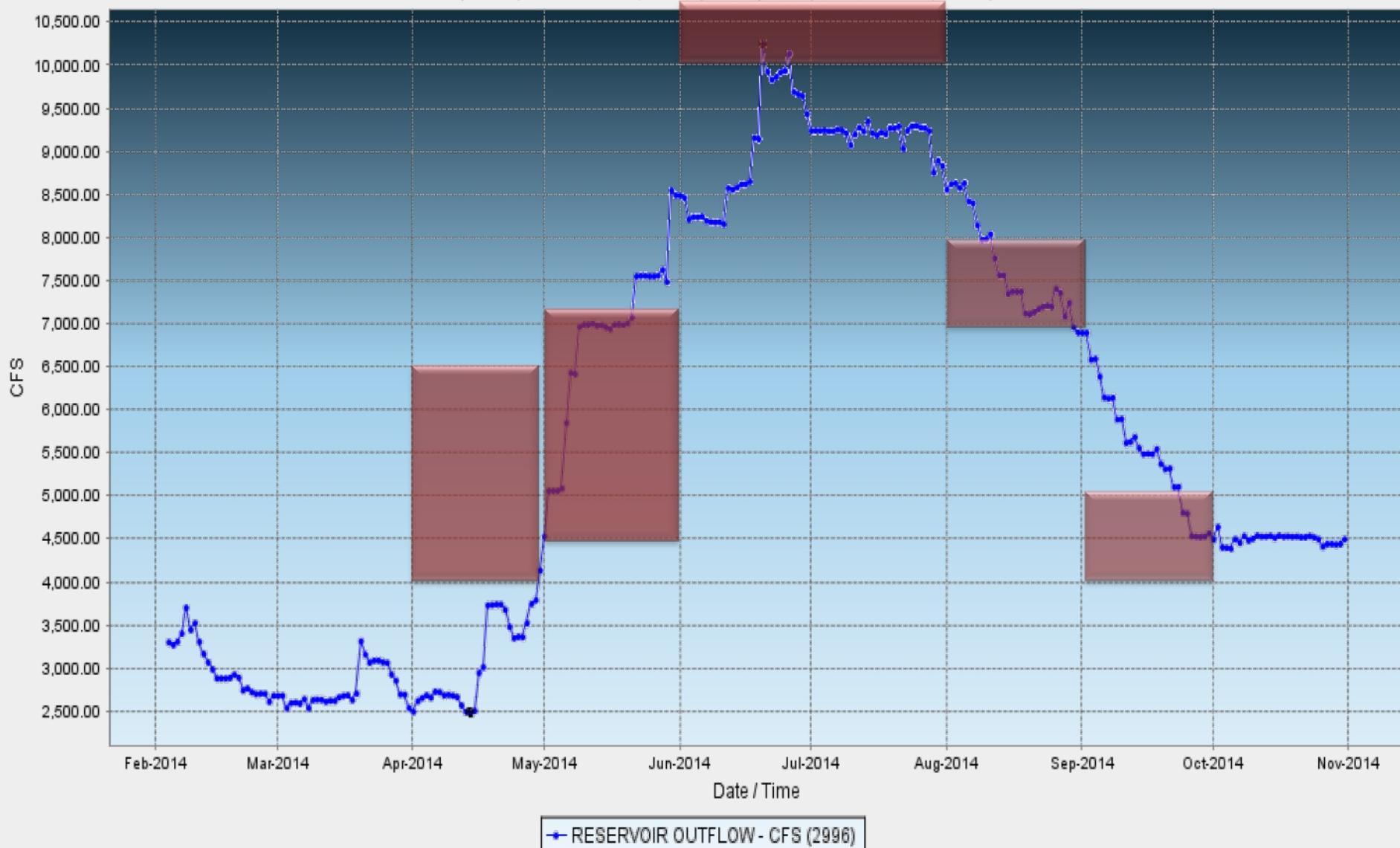
(end-of-month storage)



KESWICK RESERVOIR (KES)

Date from 02/03/2014 19:20 through 10/31/2014 19:20 Duration : 269 days

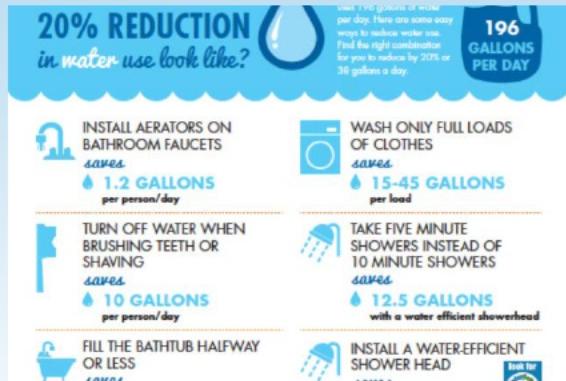
Max of period : (06/20/2014 00:00, 10256.0) Min of period: (04/14/2014 00:00, 2489.0)



Release Ranges from April 2014 DOP

Thank You

The Governor asked all Californians to reduce water consumption by **20 percent** and referred residents and water agencies to the Save Our Water campaign -- www.saveourh20.org



From: Jason Peltier

Sent: Friday, March 6, 2015 4:31 PM

To: T Birmingham (tbirmingham@westlandswater.org); 'Alison MacLeod'; 'Carmela McHenry'; 'Carolyn Jensen'; 'Catherine Karen'; 'Dan Pope'; 'Darlene Knauf'; 'David Bernhardt'; 'Dennis Cardoza'; 'Denny Rehberg'; 'Doug Subers'; 'Ed Manning'; 'Erick Mullen'; 'Gayle Holman'; 'Jason Peltier'; 'Jim Watson'; 'Joe Findaro'; 'Mike Burns'; 'Sheila Greene'; 'Susan Ramos'

Subject: Miller in Chron

Opinion

Tap California's innovators to develop water policies

By George Miller |
March 6, 2015

After 40 years of working on California water issues, it sometimes feels to me as if we haven't learned anything.

When I began my congressional career in 1975, powerful San Joaquin Valley agricultural interests were planning new dams and a new water facility in the Sacramento-San Joaquin River Delta. Environmental needs were ignored, and enormous subsidies encouraged wasteful and environmentally damaging water use. As I left the Congress in January, despite some important steps forward — including enactment of the Central Valley Project Improvement Act — all of these challenges continued.

Federal water priorities are still being set in response to the demands of politically connected irrigators. Billions of taxpayer dollars have been spent on dams and canals to serve a small fraction of the state's economy, with little consideration of the needs of most Californians and the environment.

Four decades ago, the environmental and fishing communities did not yet have a seat at the water policy table. Today, they are being intentionally excluded from key policy debates.

The drought gripping California and the West should force us to face the new reality of water policy. The policies of the past century won't work in a future where we will face continued population growth and the effects of climate change.

Federal decision-makers need to acknowledge what most experts know: The era of building big dams that cause ecological havoc and cannot pay for themselves is over. Instead, we need to use existing technology and invest in innovations to generate the water we need at a price we can afford.

The roadblocks to adoption of a 21st century water policy are not caused by federal law, but by bureaucratic inertia and political pressure from beneficiaries of the status quo. Twenty years ago, for example, Congress authorized programs that convert wastewater into clean water. Yet the proposed 2016 federal budget devotes less than 2 percent of the U.S. Bureau of Reclamation's \$1.1 billion budget to water recycling.

Federal policy is mired in early 20th century thinking, in contrast with evolving thinking in Sacramento. Last year, Gov. Jerry Brown's Water Action Plan pointed the way to sustainable water policies, including long overdue groundwater-management legislation. Voters passed a water bond to finance groundwater clean up, water recycling, conservation and — it is hoped — modern water storage rather than traditional dams. These developments show the promise of a new direction.

Here are the cornerstones of an affordable, sustainable water policy:

Reduce reliance on the delta and increase local solutions: State and federal agencies must reduce reliance on the delta. That's already state policy. Our environment and economy will be stronger when users are less reliant on this overworked ecosystem. Progress is being made here.

Los Angeles, under the leadership of Mayor Eric Garcetti, plans to cut use of imported water by 50 percent by 2024. Many cities are refocusing on local sources, recognizing that conservation is our largest source of new water and that our ocean outfalls represent the next "river" for California to tap into. (Together, those outfalls dump more water than the combined flows of the Tuolumne, Merced and Stanislaus rivers.) These local sources will be more reliable in the future than over-allocated rivers that are subject to intensifying drought cycles.

Embrace credible economics: Huge water projects and water subsidies aren't just environmentally damaging, they also represent flawed economic policies that harm the taxpayer and California's economy. Smarter water sources are cheaper as well as greener. A more business-oriented approach will point to sustainable solutions that benefit the entire state, creating more jobs on farms, in our cities and in salmon-fishing communities.

Support agricultural modernization: Some farmers have made strides toward water efficiency, but we need to do much more because agriculture uses 80 percent of California's water. We can

build more sustainable agricultural communities by increasing efficiency; managing groundwater; cleaning up pollution that leaves rural communities without drinkable water; and avoiding an overemphasis on permanent, drought-susceptible crops, like almonds.

Develop restoration programs, not environmental rollbacks: Decades of antiquated water management have helped drive the San Francisco Bay-Delta ecosystem to its lowest level ever. Yet a few cynical interests are attempting to use the drought to weaken environmental laws.

Sacrificing our environment wouldn't end water shortages, but it could shut down the salmon fishery, endanger millions of migratory wildfowl and eliminate tens of thousands of jobs. Our natural resources need emergency restoration programs to help them survive droughts — not rollbacks that could lead to extinction of species and impoverished communities.

Adopt a 58-county approach: Rather than policies dominated by a few agricultural counties, California needs a 58-county water policy that meets the needs of the Bay Area, North Coast fishermen, South Coast cities, delta towns and Central Valley farmers.

California and Congress should no longer pursue "water grab" policies that take one region's water to benefit another. The best way to craft new policies is to involve all California interests, rather than pursue another generation of back-room water deals.

Ours is widely recognized as the nation's most innovative state — a global leader in entertainment, high technology and renewable energy. It's time that our water policies tapped into that creativity to use water-management strategies that ensure a thriving future for California's economy and environment.

George Miller represented Contra Costa and Solano counties in the U.S. House of Representatives from 1975 to 2015. To comment, submit your letter to the editor at www.sfgate.com/submissions.

From: Watts, John (Feinstein)
Sent: Thursday, March 12, 2015 2:28 PM
To: Tom Birmingham
CC: Bernhardt, David L.
Subject: Confidential: Feinstein Drought Legislation Administration Comments 03.12.15
Attachments: Feinstein Drought Legislation Administration Comments 03.12.15.docx

Just like the good old days of last year, round 4, is it, or round 5? Can we confidentially talk briefly about these comments, if possible this evening? I talked briefly to Bezdek about them and have some interpretations of the comments that I believe are helpful.

Please don't share these with anyone. Thanks.

TECHNICAL DRAFTING ASSISTANCE – NOT ADMINISTRATION POLICY

March 12, 2015

The comments are focused on the changes/additions in the redline version of the bill, dated. Comments are in addition to September 2014 comments.

Introductory Remarks – These comments reflect the ongoing commitment by the Administration to provide technical feedback on this draft legislation. These are technical comments only -- specifically as how it is related to existing law -- and we are not providing a policy position on the overall legislation at this time. We appreciate the efforts of you and your staff, as we work collectively to address California's water issues. Specifically, your support last year for additional fiscal 2015 appropriations targeted to the CVP is an example of beneficial legislative action which has specifically allowed for \$5.37 million for Delta needs, including drought monitoring for endangered species and mechanisms to increase flexibility in water operations. This is having an impact today by improving the flow of data to make limited water supplies stretch as far as they can and better decisions on pumping. As explained below, we would like to explore additional similar actions with the Governor and a broader group of stakeholders that will provide meaningful and tangible benefits to water supply while meeting our requirements under the ESA.

Over the course of the past several years our knowledge and understanding of the system has increased through many of the activities funded by Congress and undertaken by the Administration in studying water supply and the needs of various users. The result has been a very aggressive drought operations plan that has allowed us to export a significant amount of water despite a continuation of one of the worst droughts in modern times. Our concern is that the current draft bill-- through both the stringent operational provisions and the water rights provisions-- could very well limit the flexibility that has supported our drought operations which could exacerbate water supply impacts instead of improving them.

We acknowledge this draft no longer includes many of the changes to the Reclamation program that were so very problematic and also has an explicit sunset, both of which address previous concerns raised in our Statement of Administration Position (SAP) last December. Nonetheless, our underlying concerns from the SAP still remain as this draft legislation is still focused on operational changes, which will not effectively provide additional water supplies, will constrain water manager flexibility to meet the dynamic needs of the water system, and will unnecessarily limits the scope and application of the Endangered Species Act. We are aware you have been receiving input from a limited set of stakeholders on the draft and applaud this outreach. We believe however there must be a broader discussion with all stakeholders to ensure transparency and to work through provisions in the bill that could lead to new rounds of litigation.

As to specific provisions, we understand amending the Endangered Species Act is not the intent of this legislation, but we fear certain provisions that create new standards, or otherwise limit all potential direct and indirect impacts, will have precisely that effect. To this end, and in order to safeguard against future interpretations that could read the draft as amending the ESA, the legislation must include a savings clause, making it clear nothing in the proposed bill will modify or supplement the Endangered Species Act nor shall it be interpreted to require the Secretaries to take any action that is not authorized under the Act.

We continue to believe, as expressed in the SAP, there must be a more holistic approach to California's water supply issues that include: development of new storage; development of habitat improvements,

TECHNICAL DRAFTING ASSISTANCE – NOT ADMINISTRATION POLICY

March 12, 2015

which will, in turn, free up water supplies for consumptive use; and emphasizing the resolution of bay-delta issues, something we believe is essential for resolving, on a long-term basis, California's water needs. The state is our partner, both operationally, and in developing and implementing drought strategies and in a long-term plan. And we believe California must have a key role in any discussion on the draft legislation. Likewise, there are other stakeholders who should be a part of any discussion identifying actions consistent with these themes and developing draft legislation that addresses the impacts of water supply shortages on a global scale instead of a narrow set of actions ostensibly intended to benefit an important, but only a subset of water users.

Finally, as part of this process, we have been asked to provide edits so that the legislation may be implemented consistent with our understanding of the legislative intent. We have provided such suggestions where possible and wish to be clear that any proposed edits are technical in nature and should not be interpreted as Administration approval on the bill or any portion thereof. Our topline comments are below. They are followed by specific comments and, where appropriate, proposed edits.

Topline:

- The draft legislation directs agency actions and restricts agency discretion in conducting certain activities, which has the potential to:
 - Limit the ability of the agency to use the best methods and/or science to address evolving issues by focusing on a particular approach;
 - Foster significant litigation over interpretation of numerous provisions;
 - Cause unintended consequences contrary to the intended goals of the legislation;
 - Contains provisions the Administration has previously opposed;
 - Provide benefits to specific stakeholders and interest groups to the detriment of others and/or the environment; and cause conflict and inconsistency between this draft legislation and other laws and agency regulations.
 - Effectively amends the ESA by inserting new standards in lieu of the existing jeopardy standard.
- **Limits Operational Flexibility.** Parts of the legislation are overly prescriptive and may limit the flexibility needed to maximize water supplies while adequately protecting listed species. It is possible that the prescriptive nature of the legislation could result in lowering the species baseline and thereby inhibit the ability of the agencies to meet water supply needs and recover species in the future.
- **Public Input Needed on New Provisions.** The legislation contains new substantive provisions of law that have not received public/stakeholder input.
- **Significantly Impacts Mission of Reclamation.** The legislation prioritizes agency-wide resources to the State of California with financial penalties that will impact Reclamation programs in the remaining western states if expedited deadlines are not met.
- **Impacts to BDCP and other Actions. Focusing on the narrow set of proposed operations changes will limit the Administration's ability to continue developing a strategy to address bay-delta issues.**

TECHNICAL DRAFTING ASSISTANCE – NOT ADMINISTRATION POLICY

March 12, 2015

SEC. _____. DEFINITIONS.

In this title:

- (1) CENTRAL VALLEY PROJECT- The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (106 Stat. 4707).
- (2) DELTA- The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.
- (3) NEGATIVE IMPACT ON THE LONG-TERM SURVIVAL- The term “negative impact on the long-term survival” means to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.
- (4) SALMONID BIOLOGICAL OPINION- The term “salmonid biological opinion” means the biological opinion issued by the National Marine Fisheries Service on June 4, 2009.
- (5) SECRETARIES- The term “Secretaries” means--
 - (A) the Secretary of Commerce; and
 - (B) the Secretary of the Interior.
- (6) SMELT BIOLOGICAL OPINION- The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008.
- (7) STATE- The term “State” means the State of California.
- (8) STATE WATER PROJECT- The term “State Water Project” means the water project described by California Water Code section 11550 et seq. and operated by the California Department of Water Resources.

Commented [A1]: While acknowledging a number of conversations on this point, we nonetheless still have fundamental questions on how this would actually be implemented. Additionally, while there is an implication that the jeopardy standard under section 7 would not apply when this standard is in effect, it is not clear on this point. Is the intent for the existing ESA regs to apply? Without more clarity, this standard could require us to operate to both the section 7 jeopardy and this new standard

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SEC. _____. NO REDIRECTED ADVERSE IMPACTS.

(a) In General- The Secretary of the Interior shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including such actions under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and other applicable Federal and State laws, shall not directly or indirectly--

- (1) result in the involuntary reduction of water supply or fiscal impacts to individuals or districts who receive water from either the State Water Project or the United States under water rights settlement contracts, exchange contracts, water service contracts, repayment contracts, or water supply contracts; or
- (2) cause redirected adverse water supply or fiscal impacts to those within the Sacramento River watershed, the San Joaquin River watershed or the State Water Project service area.

(b) Costs- To the extent that costs are incurred solely pursuant to or as a result of this Act and would not otherwise have been incurred by any entity or public or local agency or subdivision of the State of California, such costs shall not be borne by any such entity, agency, or subdivision of the State of California, unless such costs are incurred on a voluntary basis.

(c) Rights and Obligations Not Modified or Amended- Nothing in this Act shall modify or amend the rights and obligations of the parties to any existing--

- (1) water service, repayment, settlement, purchase, or exchange contract with the United States, including the United States obligation to satisfy exchange contracts and settlement contracts; or
- (2) State Water Project water supply or settlement contract with the State.

Commented [A2]: Multiple concerns with this section as drafted. First, it is unclear whether the scope of this section is limited to the Act under consideration or if it reaches all other “applicable laws.” Secondly, the use of the term “indirect” in this context both greatly expands the scope of the bill and creates a standard open to differing interpretations—how far does one go in defining indirect? Moreover, the entire CVP is interrelated and interdependent. It is virtually impossible to avoid indirectly affecting other contractors when water supply actions are taken. What happens if water supply is secured but O&M costs increase, under this section as drafted, it would not be allowed—even if necessary to avoid jeopardy. Third, this language means that if an action under the ESA has an indirect effect on water supply, no matter how benign, it would not be allowed. At a minimum, this section should simply and clearly state that the Secretary shall take all possible actions to avoid impacts to water users in implementing the Act unless doing so would violate the ESA or other applicable laws.

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SEC. _____. TEMPORARY OPERATIONAL FLEXIBILITY FOR FIRST FEW STORMS OF THE WATER YEAR.

(a) In General- Consistent with avoiding additional adverse effects upon listed fish species beyond the range of those authorized under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and other environmental protections under subsection (d), the Secretaries shall authorize the Central Valley Project and the State Water Project, combined, to operate at levels that result in negative Old and Middle River flows ~~at up to~~ -7500 cubic feet per second (based on United States Geological Survey gauges on Old and Middle Rivers) daily average for 28 cumulative days after October 1, as described in subsection (b).

Commented [A3]: Difficult to understand meaning of this language "Consistent with" makes it unclear whether the authorization is meant to reach beyond scope of existing BOs. At a minimum, there should be language in the legislation that very clearly establishes the bright line of "Nothing herein amends the Endangered Species Act nor requires or authorizes the Secretaries to take any actions that would cause a violation of the Endangered Species Act."

Commented [A4]: "no more negative than"?

(b) Days of Temporary Operational Flexibility- The temporary operational flexibility described in subsection (a) shall be authorized on days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey.

Commented [A5]: Because of the tidal cycles we find it very difficult to operate to Delta flow objectives on a daily basis; we typically operate on a 14 day running average. It is difficult to operate to OMR on a daily basis and Delta flow standards are typically not constructed this way. It is not clear how this daily accounting of days will integrate with our typical 14-day running average accounting.

Commented [A6]: Suggest October 1- June 30

(c) Compliance With ESA Authorizations- In carrying out this section, the Secretaries may continue to impose any requirements under the smelt and salmonid biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid additional adverse effects on a listed fish species beyond the range of those authorized under the Endangered Species Act of 1973.

Commented [A7]: This should be based on a balanced review of the environmental conditions to include distribution of ESA species, not just a flow

(d) Other Environmental Protections-

(1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law, including State Water Resources Control Board Decision 1641, as it may be implemented in any given year.

(2) During the first flush of sediment out of the Delta in each water year, and provided that such determination is based upon objective evidence, OMR flow may be managed at rates less negative than -5000 cubic feet per second for a minimum duration to avoid movement of adult Delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants.

(3) This section shall not affect the application of the salmonid biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those authorized under the Endangered Species Act of 1973. In addition to any other actions to benefit water supply, the Secretary and the Secretary of Commerce shall consider allowing through-Delta water transfers to occur during this period.

(4) During operations under this section, the Secretary of the Interior, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a

Commented [A8]: How are additional adverse effects determined? Implication is temporary operational flexibility can be used when flows are over 17,000cfs as long as we are below the take level—is this the intent of the section?

Commented [A9]: don't know what "beyond the range" means

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monitoring program and other data gathering to ensure incidental take levels are not exceeded, and to identify potential negative impacts and actions, if any, necessary to mitigate avoid impacts of the temporary operational flexibility to species listed under the Endangered Species Act of 1973.

Commented [A10]: Use “avoid” instead of mitigate

(e) Technical Adjustments to Target Period- If, before temporary operational flexibility has been implemented on 28 cumulative days, the Secretaries operate the Central Valley Project and the State Water Project combined at levels that result in Old and Middle River flows less negative than -7500 cubic feet per second during days of temporary operational flexibility as defined in subsection (b), the duration of such operation shall not be counted toward the 28 cumulative days specified in subsection (a).

Commented [A11]: By using cumulative days, we could have high OMR flows into November. Depending on the distribution of ESA species this could have significant impacts to ESA species

Commented [A12]: DOI does not operate the SWP

(f) Emergency Consultation; Effect on Running Averages-

(1) If necessary to implement the provisions of this section, the Secretary of the Interior shall use the emergency consultation procedures under the Endangered Species Act of 1973 and its implementing regulation at section 402.05, title 50, Code of Federal Regulations, to temporarily adjust the operating criteria under the biological opinions, solely for the 28 cumulative days of temporary operational flexibility--

(A) no more than necessary to achieve the purposes of this section consistent with the environmental protections in subsections (c) and (d); and
(B) including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day and 14-day running averages of tidally filtered daily Old and Middle River flow requirements under the biological opinions. Provided, the effects to listed species remain within the range of those analyzed under the existing biological opinions.

Commented [A13]: This does not match paragraph (a) if OMR if -7500 is treated as a limit, ie not more negative. We do not want to be more negative than -7500 and all day should be less negative. Thus this perhaps be -5000?

(2) At the conclusion of the 28 cumulative days of temporary operational flexibility, the Secretary of the Interior shall not reinitiate consultation on these adjusted operations, and no mitigation for past activities shall be required, if the effects on listed fish species of these operations under this section remain within the range of those authorized under the Endangered Species Act. If the Secretary of the Interior reinitiates consultation, no mitigation measures for past activities shall be required. Provided, the effects to listed species remain within the range of those analyzed under the existing biological opinions

Commented [A14]: Excluding these flows from the 5 and 14-day running averages defeats the purpose of this requirement. This potentially circumvents the BiOp –

(g) Level of Detail Required for Analysis- In articulating the determinations required under this section, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short time frame permitted for timely decision-making in response to changing conditions in the Delta.

Commented [A15]: This language allows for the implementation of the temporary operational flexibility based solely on an outflow and not the distribution of ESA species. The language above does not represent a balanced review and has a high risk of causing impacts to ESA species. This language voids any responsibility or liability for impacts to ESA species

Commented [A16]: How is this determined? Should it not just say existing biological opinions?

Commented [A17]: Sentence appears repetitive from one directly above. AND, does this mean that if there are adverse effects to listed species, a future consultation could not account for those effects and, if a jeopardy situation, require conservation measures? Is it trying to say the emergency consultation biop cannot require mitigation? Needs more clarity

Commented [A18]: This subsection appears to merge the concept of reinitiation with that of an emergency consultation. Needs more clarity

(h) Any temporary operations carried out consistent with this section shall be exempt from the ESA take prohibition pursuant to ESA Section 7(o)(2) – [Note –if

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this section is to move forward we continue to be concerned about litigation over the status of Reclamation's take coverage. This language would resolve the issue. But to be clear, this is simply a technical comment and not a policy position by the Administration that Reclamation should be exempt from the ESA.

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SEC. _____. EMERGENCY PROJECTS.

- (a) In General- Subject to the priority of individuals or entities, including those with Sacramento River Settlement Contracts, that have priority to the diversion and use of water over water rights held by the United States for operations of the Central Valley Project and over rights held by the State for operations of the State Water Project and, subject to the United States obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors, the Secretaries shall direct the operations of the Central Valley Project and allow the State Water Project to provide the maximum quantity of water supplies possible to Central Valley Project agricultural, municipal and industrial, and refuge service and repayment contractors, and State Water Project contractors, by approving, consistent with applicable laws (including regulations)--
- (1) any project or operations to provide additional water supplies if there is any possible way whatsoever that the Secretaries can do so unless the project or operations constitute a highly inefficient way of providing additional water supplies; and
 - (2) any projects or operations as quickly as possible based on available information to address the emergency conditions.

- (b) Mandate- In carrying out subsection (a), the applicable Secretary shall--
- (1) authorize and implement actions to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using the best available science on diurnal behavior of juvenile salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits, consistent with operational criteria and monitoring set forth in the California State Water Resources Control Board's Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions, effective January 31, 2014, or a successor order;
 - (2) in managing Old and Middle River flow under the smelt biological opinion, and without affecting the management of Old and Middle River flow under the salmon biological opinion:

(A) operating within the ranges provided for in the smelt biological opinion, implement turbidity control strategies that allow for increased water deliveries for the Central Valley Project and State Water Project while avoiding a negative impact on the long-term survival delta smelt (*Hypomesus transpacificus*) due to entrainment at Central Valley Project and State Water Project pumping plants;

(B) operating within the ranges provided for in the smelt biological opinion to minimize water supply reductions for the Central Valley Project and the State Water Project, manage reverse flow in Old and Middle Rivers at -5000 cubic feet per second (cfs) with allowances for short term fluctuations of 25 percent unless current scientific data indicate a less negative Old and Middle River flow is necessary to avoid a negative impact on the long-term survival of

Commented [A19]: If operating within the range of the smelt biological opinion there would not be a negative impact on the long-term survival of delta smelt

Commented [A20]: Current scientific data when we manage on the day-to-day basis is what we do now: weather, tides, turbidity, early warning surveys, and any other information that may be relevant

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the listed species, taking into account other factors currently affecting the species; and

(C) show in writing that any determination to manage OMR reverse flow at rates less negative than -5000 cubic feet per second is necessary to avoid a negative impact on the long-term survival of the Delta smelt, taking into account other factors currently affecting the species, including an explanation of the data examined and the connection between those data and the choice made prior to reducing pumping to a rate less negative than -5000 cfs described in subparagraph (B);

(3) adopt a 1:1 inflow to export ratio for the increment of increased flow of the San Joaquin River, as measured as a 3-day running average at Vernalis during the period from April 1 through May 31, resulting from voluntary sale, transfers, or exchanges of water from agencies with rights to divert water from the San Joaquin River or its tributaries, if the following conditions are met:

(A) on the condition that a proposed sale, transfer, or exchange under this paragraph may only proceed if the Secretary of the Interior determines that the environmental effects of the proposed sale, transfer, or exchange are consistent with effects permissible under applicable law (including regulations);

(B) Delta conditions are suitable to allow movement of the acquired, transferred, or exchanged water through the Delta consistent with the Central Valley Project's and the State Water Project's permitted water rights; and

(C) insert Reclamation language about transferred or sold water not substituting for base flows;

(D) All water made available for proposed sale, transfer or exchange shall be a real water supply and meet guidelines contained in the "Water Transfer White Paper" prepared by the California Department of Water Resources and the Bureau of Reclamation

(4) using the shortest practicable process provided under applicable law (including regulations), issue all necessary permit decisions under the authority of the Secretaries within 30 days of receiving a completed application that includes completion of all environmental reviews and requirements by the State to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality for Central Valley Project and State Water Project contractors and other water users, which barriers or gates should provide benefits for species protection and in-Delta water user water quality and shall be designed such that formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) would not be necessary;

(5)(A) complete all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on water transfer requests

Commented [A21]: B and C set a manage to jeopardy standard but ignore the need to ensure incidental take is not exceeded

Commented [A22]: Need to evaluate the situation and effects on ESA species before actions are taken Should evaluate the water supply and ESA situations on a case by case basis to make informed decisions on the overall impacts This language automatically allows export without a balance assessment

Commented [A23]: We would most likely have a 1:1 operation this year, but how would this be implemented if the I/E is something other than 1:1, eg if it is 2:1 are we expected to operate the projects under a 2:1 with exports resulting from transfers layered on top of this at a 1:1. This seems clumsy if implementable at all Probably not likely this year but possible

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Commented [A24]: This language leaves out the environmental laws to protect ESA species As worded, this action can take place as long as it is within the permitted water rights, but doesn't address environmental impacts

Commented [A25]: This section assumes there is no impact associated with these actions and that agencies need to prove impact to stop an action Concern is that the action will be taking place without prior consideration of impacts

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Commented [A26]: Additional protection to avoid paper water proposals

Commented [A27]: Not sure how you can design a barrier that would not require section 7 consultations with the various ESA species in the area

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associated with voluntarily fallowing nonpermanent crops in the State, using the shortest practicable process provided under applicable law (including regulations) within 30 days of receiving such a request); and

(B) allow any water transfer request associated with fallowing to maximize the quantity of water supplies available for nonhabitat uses as long as the fallowing and associated water transfer are in compliance with applicable Federal laws (including regulations);

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(6) allow any North of Delta agricultural water service contractor with unused Central Valley Project water to take delivery of such unused water through April 15, of the contract year immediately following the contract year in which such water was allocated, if--

- (A) the contractor requests the extension; and
- (B) the requesting contractor certifies that, without the extension, the contractor would have insufficient supplies to adequately meet water delivery obligations;

(7) implement instream and offsite projects in the Delta and upstream in the Sacramento River and San Joaquin basins, in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to actions taken under this Act.

(c) Other Agencies- To the extent that a Federal agency other than agencies headed by the Secretaries has a role in approving projects described in subsections (a) and (b), the provisions of this section shall apply to those Federal agencies.

(d) Accelerated Project Decision and Elevation-

(1) IN GENERAL- Upon the request of the State, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions relating to a Federal project or operation to provide additional water supplies or address emergency drought conditions pursuant to subsections (a) and (b).

(2) REQUEST FOR RESOLUTION-

(A) IN GENERAL- Upon the request of the State, the head of an agency referred to in subsection (a), or the head of another Federal agency responsible for carrying out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide emergency water supplies.

(B) MEETING- The Secretary of the Interior shall convene a meeting requested under subparagraph (A) not later than 7 days after receiving the meeting request.

Commented [A28]: Should say Governor

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- (3) NOTIFICATION- Upon receipt of a request for a meeting under this subsection, the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including the project to be reviewed and the date for the meeting.
- (4) DECISION- Not later than 10 days after the date on which a meeting is requested under paragraph (2), the head of the relevant Federal agency shall issue a final decision on the project in writing.
- (5) MEETING CONVENED BY SECRETARY- The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

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SEC. _____. PROGRESS REPORT.

Ninety days after the date of the enactment of this Act and every 90 days thereafter, the Secretaries shall provide a progress report describing the implementation of sections 102 and 103 to the Committee on Natural Resources in the House of Representatives and the Committee on Energy and Natural Resources in the Senate.

SEC. _____. STATUS OF SURFACE STORAGE STUDIES.

One year after the date of the enactment of this Act, the Secretary of the Interior shall provide a progress report on the status of feasibility studies undertaken pursuant to clauses (i) and (ii) of section 103(d)(1)(A) of the Water Supply, Reliability, and Environmental Improvement Act (Public Law 108-361) to the Committee on Natural Resources in the House of Representatives and the Committee on Energy and Natural Resources in the Senate. The report shall include timelines for study completion, draft environmental impact statements, final environmental impact statements, and Records of Decision.

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SEC. _____. OFFSET FOR STATE WATER PROJECT.

(a) Implementation Impacts- The Secretary of the Interior shall confer with the California Department of Fish and Wildlife in connection with the implementation of this Act on potential impacts to any consistency determination for operations of the State Water Project issued pursuant to California Fish and Game Code section 2080.1.

(b) Additional Yield- If, as a result of the application of this Act, the California Department of Fish and Wildlife--

- (1) revokes the consistency determinations pursuant to California Fish and Game Code section 2080.1 that are applicable to the State Water Project;
- (2) amends or issues one or more new consistency determinations pursuant to California Fish and Game Code section 2080.1 in a manner that directly or indirectly results in reduced water supply to the State Water Project as compared with the water supply available under the smelt biological opinion and the salmonid biological opinion; or
- (3) requires take authorization under section 2081 for operation of the State Water Project in a manner that directly or indirectly results in reduced water supply to the State Water Project as compared with the water supply available under the smelt biological opinion and the salmonid biological opinion,

and as a consequence of the Department's action, Central Valley Project yield is greater than it would have been absent the Department's actions, then that additional yield shall be made available to the State Water Project for delivery to State Water Project contractors to offset losses resulting from the Department's action.

Commented [A29]: It is not clear how this impact would be measured. We integrate operations via the COA and impacts and benefits affect both projects. What is the measure of reduced water supply, eg exports, storage loss? Over what period?

Commented [A30]: Are we clear how this impacts COA accounting?

(c) Notification Related to Environmental Protections- The Secretaries of the Interior or Commerce shall notify the Director of the California Department of Fish and Wildlife regarding any changes in the manner in which reasonable and prudent alternatives related to the smelt biological opinion or the salmonid biological opinion are implemented and shall confirm that the changes maintain an appropriate level of protection for the species covered by the opinions.

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SEC. _____. AREA OF ORIGIN PROTECTIONS.

(a) In General- The Secretary of the Interior is directed, in the operation of the Central Valley Project, to adhere to California's water rights laws governing water rights priorities and to honor water rights senior to those held by the United States for operation of the Central Valley Project, regardless of the source of priority, including any appropriative water rights initiated prior to December 19, 1914, as well as water rights and other priorities perfected or to be perfected pursuant to California Water Code Part 2 of Division 2. Article 1.7 (commencing with section 1215 of chapter 1 of part 2 of division 2, sections 10505, 10505.5, 11128, 11460, 11461, 11462, and 11463, and sections 12200 to 12220, inclusive).

(b) Diversions- Any action undertaken by the Secretaries pursuant to both this Act and section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) that requires that diversions from the Sacramento River or the San Joaquin River watersheds upstream of the Delta be bypassed shall not be undertaken in a manner that alters the water rights priorities established by California law.

(c) Endangered Species Act- Nothing in this title alters the existing authorities provided to and obligations placed upon the Federal Government under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), as amended.

(d) Contracts- With respect to individuals and entities with water rights on the Sacramento River, the mandates of this section may be met, in whole or in part, through a contract with the Secretary executed pursuant to section 14 of Public Law 76-260; 53 Stat. 1187 (43 U.S.C. 389) that is in conformance with the Sacramento River Settlement Contracts renewed by the Secretary in 2005.

Commented [A31]: Sentence should end here. We are aware that the additional language is from state law but quite frankly do not have a full appreciation for its full meaning in this context and whether this would indeed be a change to how section 8 of the Reclamation Act allows for application of state law to Reclamation projects on the issue of water rights and beneficial use. As we understand it, the argument is that this is not a substantive change from existing law and practice. If so, then just simply insert "Consistent with section 8 of the Act of June 17, 1902." That way it is clear we are not creating a new standard

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SEC. _____. ALLOCATIONS FOR SACRAMENTO VALLEY CONTRACTORS.

(a) Allocations—

(1) IN GENERAL Subject to paragraph (2) and subsection (b), the Secretary of the Interior is directed, in the operation of the Central Valley Project, to allocate water provided for irrigation purposes to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed in compliance with the following:

- (A) Not less than 100 percent of their contract quantities in a 'Wet' year.
- (B) Not less than 100 percent of their contract quantities in an 'Above Normal' year.
- (C) Not less than 100 percent of their contract quantities in a 'Below Normal' year that is preceded by an 'Above Normal' or a 'Wet' year.
- (D) Not less than 50 percent of their contract quantities in a 'Dry' year that is preceded by a 'Below Normal,' an 'Above Normal,' or a 'Wet' year.
- (E) In all other years not identified herein, the allocation percentage for existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed shall not be less than twice the allocation percentage to South-of-Delta Central Valley Project agricultural water service contractors, up to 100 percent; provided, that nothing herein shall preclude an allocation to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed that is greater than twice the allocation percentage to South-of-Delta Central Valley Project agricultural water service contractors.

Commented [A32]: Changing CVP allocation procedures or assumptions can affect COA accounting and probably should be reviewed for COA impacts

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(2) CONDITIONS The Secretary's actions under paragraph (a) shall be subject to—

- (A) the priority of individuals or entities with Sacramento River water rights, including those with Sacramento River Settlement Contracts, that have priority to the diversion and use of Sacramento River water over water rights held by the United States for operations of the Central Valley Project;
- (B) the United States obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors; and
- (C) the Secretary's obligation to make water available to managed wetlands pursuant to section 3406(d) of the Central Valley Project Improvement Act (Public Law 102-575).

Commented [A33]: This will also affect M&I allocation and b2 allocations

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(b) Protection of Municipal and Industrial Supplies Nothing in subsection (a) shall be deemed to—

- (1) modify any provision of a water service contract that addresses municipal and industrial water shortage policies of the Secretary;
- (2) affect or limit the authority of the Secretary to adopt or modify municipal and industrial water shortage policies;

Commented [A34]: 3406(b)(2) also??

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- (3) affect or limit the authority of the Secretary to implement municipal and industrial water shortage policies; or
- (4) affect allocations to Central Valley Project municipal and industrial contractors pursuant to such policies.

~~Neither subsection (a) nor the Secretary's implementation of subsection (a) shall constrain, govern or affect, directly or indirectly, the operations of the Central Valley Project's American River Division or any deliveries from that Division, its units or its facilities.~~

(e) No Effect on Allocations ~~This section shall not~~

- (1) affect the allocation of water to Friant Division contractors; or
- (2) result in the involuntary reduction in contract water allocations to individuals or entities with contracts to receive water from the Friant Division.

(d) Program for Water Rescheduling ~~The Secretary of the Interior shall develop and implement a program, not later than 1 year after the date of the enactment of this Act, to provide for the opportunity for existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed to reschedule water, provided for under their Central Valley Project water service contracts, from one year to the next.~~

(e) Definitions ~~In this section:~~

- (1) ~~The term "existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed" means water service contractors within the Shasta, Trinity, and Sacramento River Divisions of the Central Valley Project, that have a water service contract in effect, on the date of the enactment of this section, that provides water for irrigation.~~
- (2) ~~The year type terms used in subsection (a) have the meaning given those year types in the Sacramento Valley Water Year Type (40 30 30) Index.~~

Commented [A35]: The CVP is an integrated system and changes in one division will affect operations in another division, ie changes in allocation will affect operations in the Amreican River operations

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Commented [A36]: The CVP is an integrated system and a change in the water operations due to changes in allocation in one part of the system can affect the supply in another division

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SEC. 204. ALLOCATIONS FOR SACRAMENTO VALLEY CONTRACTS. – Note to all reviewers – the language below reflects technical edits provided by Reclamation in light of discussions with representatives from water users to be inserted in lieu of the text above. As stated above in the introductory remarks, these technical do not evince a policy position by the Administration supporting this section. It is just the opposite. While these changes make this section clearer in terms of legislative intent, the Administration continues to oppose this

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section as unnecessarily limiting the ability of the Administration to respond to changing conditions in real-time.

(a) Allocations. –

- (1) In General.-- Subject to paragraph (2) and subsection (b), the Secretary of the Interior is directed, in the operation of the Central Valley Project, to allocate water provided for irrigation purposes to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed in compliance with the following:
- (A) Not less than 100% of their contract quantities in a “Wet” year.
- (B) Not less than 100% of their contract quantities in an “Above Normal” year.
- (C) Not less than 100% of their contract quantities in a “Below Normal” year that is preceded by an “Above Normal” or a “Wet” year.
- (D) Not less than 50% of their contract quantities in a “Dry” year that is preceded by a “Below Normal,” an “Above Normal,” or a “Wet” year.

- (2) Conditions. -- The Secretary’s actions under paragraph (a) shall be subject to –

TECHNICAL DRAFTING ASSISTANCE – NOT ADMINISTRATION POLICY

March 12, 2015

(A) The priority of individuals or entities with Sacramento River water rights, including those with Sacramento River Settlement Contracts,

that have priority to the diversion and use of Sacramento River

water over water rights held by the United States for operations of

the Central Valley Project;

(B) the Untied States obligation to make a substitute supply of water

available to the San Joaquin River Exchange Contractors; and

(C) The Secretary of the Interior's obligation to make water available

to managed wetlands pursuant to section 3406(d) of the Central

Valley Project Improvement Act, (Public Law 102-575).

(b) Protection of Municipal and Industrial Supplies.--Nothing in subsection (a)
shall be deemed to—

(1) modify any provision of a water service contract that addresses
municipal and industrial water shortage policies of the Secretary;

(2) affect or limit the authority of the Secretary to adopt or modify
municipal and industrial water shortage policies;

(3) affect or limit the authority of the Secretary to implement municipal and
industrial water shortage policies; or

(4) The application of allocations made subject to subsection (a) to existing

TECHNICAL DRAFTING ASSISTANCE – NOT ADMINISTRATION POLICY

March 12, 2015

Central Valley Project agricultural contractors within the Sacramento River

Watershed shall only be applied in a manner to affect allocations to Central Valley

Project municipal and industrial water service contractors within the Shasta,

Trinity and Sacramento River Divisions of the Central Valley Project.

Neither subsection (a) nor the Secretary's implementation of subsection (a) shall
constrain, govern or affect, directly or indirectly, the operations of the Central
Valley Project's American River Division or any deliveries from that Division, its
units or its facilities.

(c) NO EFFECT ON ALLOCATIONS. -- This section shall not –

(1) affect the allocation of water to Friant Division contractors; or

(2) result in the involuntary reduction in contract water allocations to
individuals or entities with contracts to receive water from the Friant
Division.

(d) The Secretary will direct that the United States Bureau of Reclamation
develop and implement a program to provide for the opportunity for existing
Central Valley Project agricultural water service contractors within the Sacramento
River Watershed to reschedule water, as provided for under their CVP water
service contracts, from one year to the next.

(e) Definitions.--In this section:

TECHNICAL DRAFTING ASSISTANCE – NOT ADMINISTRATION POLICY

March 12, 2015

(1) The term ``existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed" means water service contractors within the Shasta, Trinity, and Sacramento River Divisions of the Central Valley Project, that have a water service contract in effect, on the date of the enactment of this section, that provides water for irrigation.

(2) The year type terms used in subsection (a) have the meaning given those year types in the Sacramento Valley Water Year Type (40-30-30) Index.

(f) Central Valley Refuges and Habitat Areas.

- (1) STATUTORY REFERENCES.—In this subsection, all citation of specific sections shall refer to the Central Valley Project Improvement Act (106 Stat. 4706).
- (2) In GENERAL. — [Refuge advocates have suggested language on making the funding of Level 2 supplies a “non-discretionary mitigation requirement.” We need to work further on revisions to this language in a three-way conversation with refuge advocates and the Bureau of Reclamation.]
- (3) AUTHORIZATION OF APPROPRIATION. — In fiscal year 2015-2016 and in any successive year when there is a declaration of drought emergency by the Governor of California, in addition to funding under section 3407, there is authorized to be appropriated to the Secretary \$2 million for the acceleration and completion of water infrastructure and conveyance facilities necessary to achieve full water deliveries to Central Valley wildlife refuges and habitat areas pursuant to section 3406(d).

TECHNICAL DRAFTING ASSISTANCE – NOT ADMINISTRATION POLICY

March 12, 2015

SEC. ____ . EFFECT ON EXISTING OBLIGATIONS.

- (a) IN GENERAL.—Nothing in this title preempts or modifies any existing obligation of the United States under Federal reclamation law to operate the Central Valley Project in conformity with State law, including established water rights priorities.
- (b) OBLIGATIONS UNDER CENTRAL VALLEY PROJECT IMPROVEMENT ACT.—Nothing in this Act other than subsection (f) affects or modifies any existing obligation under the Central Valley Project Improvement Act (title 34 of Public Law 102-575).

Commented [A37]: B2 shortages are linked to water year type and NOD allocations and this may affect the May 2003 Decision

SEC. ____ . TERMINATION OF AUTHORITIES.

This Act shall expire on September 30, 2016, or the date on which the Governor of the State suspends the state of drought emergency declaration, whichever is later.

Commented [A38]: This is potentially a major loophole, as it leaves total discretion to the Governor of CA for operation of federal water projects

Subject: John Watts And Tom B. Call
Location: [REDACTED] code [REDACTED]

Start: 3/14/2015 8:00 AM

End: 3/14/2015 9:00 AM

Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Bernhardt, David L.

Required Attendees: John_Watts@feinstein.senate.gov; Thomas W. (Tom) Birmingham Esq.

Resources: [REDACTED] code [REDACTED]

STATEMENT OF CONFIDENTIALITY&DISCLAIMER: The information contained in this email message is attorney privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this email is strictly prohibited. If you have received this email in error, please notify us immediately by calling (303)-223-1300 and delete the message. Thank you.

From: Watts, John (Feinstein)
Sent: Tuesday, March 17, 2015 12:11 PM
To: Tom Birmingham; Bernhardt, David L.
Subject: Suggested revision to section 102(a) from Emergency Projects section
Attachments: emergency projects revise clean 3-17.docx; emergency projects revise redline 3-17.docx

In lieu of the call I asked for earlier today, we might be able to address the topic I wanted to raise through this email.

I have attached a proposed revision to the Emergency Projects subsection (a) that achieves two purposes: 1) it focuses only on changes in project operations, rather than new construction projects; and 2) it substantially condenses the text. Attached are both clean and redline versions of the proposed new text.

The reason to focus only on project operations rather than construction of new projects are the following:

- 1) Stuart Somach indicated that the language about offsetting any fiscal impacts in the “No Redirected Adverse Impacts” section was based on his concern that some water districts could see their O&M costs increased due to new construction authorized under subsection (a). The State and Interior (and this office, to be honest) have been worried about the potential ramifications of the no adverse fiscal impacts language, and I think we can drop that language if we remove the possibility of new construction projects being built under the bill. I think this will help us get broader agreement on the “No Redirected Adverse Impacts” language, which has been problematic.
- 2) I seriously doubt any new projects would actually have been built under the authority of subsection (a) in any event. All existing laws have to be followed, so I am not sure what is gained by it.

Do these changes look OK to you? If you have any concerns about them, happy to discuss on a call.

SEC. 102. EMERGENCY PROJECTS.

- (a) In General. - The Secretaries shall direct the operations of the Central Valley Project and allow the State Water Project to provide the maximum quantity of water supplies possible, by approving quickly based on available information any adjustment in operations to provide additional water supplies if consistent with
- (1) applicable laws (including regulations); and
 - (2) the limitations imposed by sections 202 and 203 of this Act.

SEC. 102. EMERGENCY PROJECTS.

- (a) In General- ~~Subject to the priority of individuals or entities, including those with Sacramento River Settlement Contracts, that have priority to the diversion and use of water over water rights held by the United States for operations of the Central Valley Project and over rights held by the State for operations of the State Water Project and, subject to the United States obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors, T~~he Secretaries shall direct the operations of the Central Valley Project and allow the State Water Project to provide the maximum quantity of water supplies possible to Central Valley Project agricultural, municipal and industrial, and refuge service and repayment contractors, and State Water Project contractors, by approving ~~quickly based on available information, consistent with applicable laws (including regulations)~~ ~~(1) any project or adjustment in operations to provide additional water supplies if consistent with if there is any possible way whatsoever that the Secretaries can do so unless the project or operations constitute a highly inefficient way of providing additional water supplies;~~
- (1) applicable laws (including regulations); and
- (2) the limitations imposed by sections 202 and 203 of this Act.
~~(and
(2) any projects or operations as quickly as possible based on available information to address the emergency conditions.~~

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From: Tom Birmingham
Sent: Thursday, March 19, 2015 11:18 AM
To: 'Watts, John (Feinstein)'; 'Bernhardt, David L.'
Subject: RE: Suggested revision to section 102(a) from Emergency Projects section

John,

The proposed changes are acceptable to Westlands.

Tom

From: Watts, John (Feinstein) [mailto:John_Watts@feinstein.senate.gov]
Sent: Tuesday, March 17, 2015 12:11 PM
To: Tom Birmingham; Bernhardt, David L.
Subject: Suggested revision to section 102(a) from Emergency Projects section

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Do these changes look OK to you? If you have any concerns about them, happy to discuss on a call.

From: Jason Peltier
Sent: Thursday, March 19, 2015 2:38 PM
To: Dennis Cardoza; Joe Findaro; David Bernhardt
Subject: Fwd: Western Growers' Response to Gov. Brown's \$1B Emergency Drought Package

Begin forwarded message:

From: Dave Puglia <DPuglia@WGA.com>
Date: March 19, 2015 at 2:20:04 PM PDT
To: Tom Birmingham <tbirmingham@westlandswater.org>, "Jason Peltier" (jpeltier@westlandswater.org) <jpeltier@westlandswater.org>, "Ed Manning (E-mail)" <emanning@ka-pow.com>, "Carolyn Jensen (cjensen@ka-pow.com)" <cjensen@ka-pow.com>
Subject: FW: Western Growers' Response to Gov. Brown's \$1B Emergency Drought Package

From: Western Growers [<mailto:wfweber=wga.com@mail66.atl91.mcsv.net>] On Behalf Of Wendy Fink-Weber
Sent: Thursday, March 19, 2015 2:08 PM
To: Dave Puglia
Subject: Western Growers' Response to Gov. Brown's \$1B Emergency Drought Package

Western Growers members provide half the nation's fresh fruits and vegetables including a third of America's fresh organic produce.

Email not displaying correctly?
[View it in your browser.](#)

For interviews,
contact:
[Wendy Fink-Weber](#),
Senior Director of
Communications
(949) 885-2256
or
[Jeff Janas](#)
Communications
Manager
(949) 885-2318

Western Growers Responds to Gov. Jerry Brown's \$1 Billion Emergency Drought Legislative Package

FOR IMMEDIATE RELEASE

IRVINE, Calif. (March 19, 2015) -- Statement from Western Growers' President and CEO Tom Nassif on Governor Jerry Brown's \$1 Billion Emergency Drought Legislative Package:

"Today the Governor said that if the drought

continues, ‘there will be restrictions’ on water use by all Californians. This may be interpreted by some to mean that so far, there haven’t been any restrictions placed on the state’s farmers. In fact, California farmers and Californians living in some rural areas are the only people in the state who have had their water cut off. Last year, the State Water Project only delivered 5 percent of the requested supply. The federal Central Valley Project delivered no water at all to the San Joaquin Valley. This year, the state project will deliver only 20 percent and the federal project is projecting another year of zero water delivered to the San Joaquin Valley.

Farmers bear the brunt of these restrictions. Last year, 500,000 acres of highly productive farmland was left unplanted, and that number is expected to grow by as much as 40 percent this year. For the farm workers and others whose economic security is tied to California’s farms, water supply restrictions mean lost jobs and family stress. Last year, 17,000 farm jobs were lost due to water cuts and this year the number will be higher.

We appreciate the intentions behind the emergency legislation announced today and we are grateful for the aid it might provide to some of the tens of thousands in our communities who are suffering, but real relief can only come from an end to this drought and the regulatory policies that have exacerbated it. We continue to watch helplessly as scarce water that could be stored south of the Delta is instead sent to the sea in the name of species protection, notwithstanding the fact that through both wet and dry periods this has failed to halt the decline of the very same species.

We urge members of both parties in Congress to recommit to the hard work of crafting legislation that would shield farmers, farm workers and cities in the San Joaquin Valley from this regulatory overreach without altering the Endangered Species Act. It can be done, and nearly was done last year. The good work of Senator Feinstein, Majority Leader McCarthy, and Representatives Valadao, Nunes, Costa and Calvert must not be abandoned. We urge these leaders to restart their work quickly and seek rapid action on the legislation that was negotiated last year.”

About Western Growers:

Since 1926, we have represented local and regional family farmers growing fresh produce in Arizona and California. Our members provide half the nation's fresh fruits and vegetables including a third of America's fresh organic produce. Some also farm throughout the U.S. and in other countries so people have year-round access to nutritious food. For generations we have provided variety and healthy choices as the first line of defense against obesity and disease. We grow the best medicine in the world.™

###

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of the press or an interested party.

Our mailing address is:

Western Growers
17620 Fitch
Irvine, CA 92614

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[unsubscribe from this list](#) | [update subscription preferences](#)

From: Tom Birmingham
Sent: Wednesday, March 25, 2015 9:19 AM
To: Kiel Weaver; Bernhardt, David L.
Subject: Fwd: Draft
Attachments: Draft Alternative Legislation.docx; Untitled attachment 15809.htm

Please do not distribute to anyone.

Sent from my iPhone

Begin forwarded message:

From: "Tom Birmingham" <tbirmingham@westlandswater.org>
Date: March 23, 2015 at 5:58:16 PM EDT
To: Brent Walthall <bwalthall@kcwa.com>
Subject: Fwd: Draft

Another try.

Sent from my iPhone

Begin forwarded message:

From: Tom Birmingham <tbirmingham@westlandswater.org>
Date: March 22, 2015 at 5:18:57 PM MDT
To: 'Brent Walther' <bwalthll@kcwa.com>, thomas.gibson@resources.ca.gov, "'Gibson, Thomas@Wildlife'" <Thomas.Gibson@wildlife.ca.gov>
Subject: Draft

Brent and Tom,

Attached is a draft document that I prepared after our meeting yesterday. I believe it is consistent with the "Gibson's Thoughts" document. I also included some provisions out of the Feinstein bill that will benefit fish. I am sure this will need revision and further discussion. Is there some time late Tuesday when we can talk?

Again, thank you for taking time out of your Saturday to meet.

Tom

SEC. ___. DEFINITIONS.

In this Act:

- (1) DELTA.—The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.
- (2) Export Pumping Rates.—The term “export pumping rates” means the rates of pumping at the C.W. “Bill” Jones Pumping Plant and the Harvey O. Banks Pumping Plant, in the southern Delta
- (3) LISTED FISH SPECIES.—The term “listed fish species” means listed salmonid species and the Delta smelt.
- (4) LISTED SALMONID SPECIES.—The term “listed salmonid species” means natural origin steelhead, natural origin genetic spring run Chinook, and genetic winter run Chinook salmon within the evolutionary significant unit (ESU) or distinct population segment (DPS).
- (5) SALMONID BIOLOGICAL OPINION.—The term “salmonid biological opinion” means the biological opinion issued by the National Marine Fisheries Service on June 4, 2009.
- (9) SMELT BIOLOGICAL OPINION.—The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008.
- (10) STATE.—The term “State” means the State of California.

SEC. ___. ENSURING THE PROTECTION OF LISTED SPECIES.

Nothing in this Act shall be deemed to authorize the Secretaries to take any action or actions that reduce appreciably the likelihood of both the survival and recovery of a federally listed species in the wild by reducing the reproduction, numbers or distribution of such species.

SEC. ___. OPERATIONS UNDER BIOLOGICAL OPINIONS

Operating within the existing smelt biological opinion and the salmonid biological opinion; based on information and experience gained since the adoption of those biological opinions; and within the flexibility inherent in the Biological Opinions; the Secretaries shall direct or allow operations of the Central Valley Project and the State Water Project to provide the maximum supply of water possible under current hydrologic conditions.

SEC. _____. MANAGEMENT OF REVERSE FLOW UNDER THE BIOLOGICAL OPINIONS

- (a) In implementing the provisions of the smelt biological opinion and salmonid biological opinion, or any successor biological opinions, pertaining to management of reverse flow in the Old and Middle Rivers, the Secretary shall restrict export pumping rates to achieve reverse flow in Old and Middle Rivers no less negative than the maximum permitted under the pertinent biological opinion unless less negative reverse flow is reasonably required to avoid adverse impacts on species abundance beyond those considered under the smelt biological opinion.
- (b) Any decision to restrict export pumping rates to achieve reverse flow in Old and Middle Rivers less negative than the maximum permitted under the smelt biological opinion shall be explained in writing, including an explanation of the data examined and the connection between those data and the choice made, and promptly posted on the pertinent agency website.

SEC. _____. INFLOW/EXPORT RATIO IN APRIL AND MAY

To encourage the acquisition of water to increase flow in the San Joaquin River for the benefit of out-migrating salmonid species, the Secretary of Commerce shall adopt a 1:1 inflow to export ratio for the increment of increased flow of the San Joaquin River, as measured as a 3-day running average at Vernalis during the period from April 1 through May 31, resulting from voluntary sale, transfers, or exchanges of water from agencies with rights to divert water from the San Joaquin River or its tributaries, if the following conditions are met:

- (A) a proposed sale, transfer, or exchange under this paragraph may only proceed if the Secretary of the Interior determines that the environmental effects of the proposed sale, transfer, or exchange are consistent with effects permissible under applicable law (including regulations);
- (B) Delta conditions are suitable to allow movement of the acquired, transferred, or exchanged water through the Delta consistent with the Central Valley Project's and the State Water Project's permitted water rights; and
- (C) such voluntary sale, transfer or exchange of water results in flow that is in addition to flow that otherwise would occur in the absence of the sale, transfer or exchange such voluntary sale, transfer or exchange.

SEC. . USE OF CVPPIA RESTORATION FUND.

Not less than fifty percent of the Central Valley Project Restoration Fund payments collected south-of-Delta Central Valley Project water service contractors shall be used to implement projects to benefit listed fish species that rely on the Delta ecosystem during

all or part of their life stages. Projects funded pursuant to the paragraph shall be prioritized by the Secretary of the Interior in consultation with the Secretary of Commerce, the California Department of Fish and Wildlife, and the Pacific Fishery Management Council. Such funds shall be continuously appropriated.

SEC. ____ PILOT PROGRAM TO PROTECT NATIVE ANADRAMOUS FISH IN THE STANISLAUS RIVER.

(a) Establishment of Non-native Predator Fish Removal Program- The Assistant Administrator and districts, in consultation with the United States Fish and Wildlife Service and the California Department of Fish and Wildlife, shall jointly develop and conduct a pilot non-native predator fish removal program to remove non-native striped bass, smallmouth bass, largemouth bass, black bass, and other non-native predator fishes from the Stanislaus River. The pilot program shall--

- (1) be scientifically based;
- (2) include methods to quantify the number and size of predator fishes removed each year, the impact of such removal on the overall abundance of predator fishes, and the impact of such removal on the populations of juvenile anadromous fish found in the Stanislaus River by, among other things, evaluating the number of juvenile anadromous fish that migrate past the rotary screw trap located at Caswell;
- (3) among other methods, use wire fyke trapping, portable resistance board weirs, and boat electrofishing, which are among the most effective predator collection techniques that minimize effects to native anadromous fish;
- (4) be developed, including the application for all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), for the performance of the pilot program, not later than 6 months after the date of the enactment of this Act;
- (5) be implemented as quickly as possible following the issuance of all necessary scientific research and species enhancement permits needed to begin the pilot program; and
- (6) be implemented for a period of seven consecutive calendar years.

(b) Management- The management of the pilot program shall be the joint responsibility of the Assistant Administrator and the districts. Such parties shall work collaboratively to ensure the performance of the pilot program, and shall discuss and agree upon, among other things, changes in the structure, management, personnel, techniques, strategy, data collection, reporting and conduct of the pilot program.

(c) Conduct-

- (1) IN GENERAL- At the election of the districts, the pilot program may be conducted by their own personnel, qualified private contractors hired by the districts, personnel of, on loan to, or otherwise assigned to NOAA Fisheries, or a combination thereof.

(2) PARTICIPATION BY NOAA FISHERIES- In the event the districts elect to conduct the program using their own personnel or qualified private contractors hired by them, the Assistant Administrator has the option to assign an employee of, on loan to, or otherwise assigned to NOAA Fisheries, to be present for all activities performed in the field. Such presence shall ensure compliance with the agreed upon elements specified in subsection (b). The districts shall pay 100 percent of the cost of such participation as specified in subsection (d).

(3) TIMING OF ELECTION- The districts shall notify the Assistant Administrator of their election on or before October 15 of each calendar year of the pilot program, which election shall apply to the work performed in the subsequent calendar year.

(d) Funding-

(1) CONTRIBUTED FUNDS- The Assistant Administrator is authorized to receive and expend contributed funds for the purposes for which the funds contributed in a like manner as if said sums had been specifically appropriated for said purposes.

(2) ANNUAL FUNDING- The districts shall be responsible through contributed funds for 100 percent of the cost of the pilot program. On or before December 1 of each year of the pilot program, the Assistant Administrator shall submit to the districts an estimate of the cost to be incurred by the NOAA Fisheries in the following calendar year, if any, including the cost of any data collection and posting under subsection (e). If an amount equal to the estimate is not provided through contributed funds, or any other fund as directed by the Assistant Administrator, by the districts on or before December 31 of each year, (a) the NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled, and (b) the districts shall be prohibited from conducting any aspect of the pilot program, until full payment is made by the districts.

(3) ACCOUNTING- On or before September 1 of each calendar year, the Assistant Administrator shall provide an accounting of the prior calendar year's expenses to the districts. If the estimate paid by the districts was less than the actual costs incurred by the NOAA Fisheries, the districts shall have until September 30 of that calendar year to pay the difference to the fund indentified by the Assistant Administrator in subsection (d)(1), or NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled. If the estimate paid by the districts was greater than the actual costs incurred by the NOAA Fisheries, then a credit shall be provided to the districts, which shall be deducted from the estimate payment the districts must make for the work performed by the NOAA Fisheries, if any, in the next calendar year.
Administrator, by the districts on or before December 31 of each year, (a) the NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled, and (b) the districts shall be prohibited from conducting any aspect of the pilot program, until full payment is made by the districts.

(e) Reporting and Evaluation-

(1) IN GENERAL- On or before the 15th day of each month, the Assistant Administrator shall post on the website of the NOAA Fisheries a tabular summary of the raw data collected in the prior month.

(2) REPORT- On or before June 30 of the calendar year following the completion of the program, the Assistant Administrator and districts shall jointly publish a peer reviewed report that--

- (A) discusses the findings and conclusions of the pilot program;
- (B) synthesizes the data collected under paragraph (1); and
- (C) makes recommendations for further study and action.

(f) Permits Process-

(1) Not later than 180 days after filing of an application Assistant Administrator and the districts, the Secretary of the Interior, the Secretary of Commerce, or both, as appropriate, shall issue all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act (16 U.S.C. 1539(a)(1)), for the performance of the pilot program.

(3) All permits issued shall be in the name of the NOAA Fisheries and the districts.

(4) Districts may delegate the authority to administer the permit authority to any qualified private contractor retained in accordance with subsection (c).

(5) The pilot program, including amendments thereto by the appropriate Federal and State agencies, shall constitute a conservation plan that complies with the requirements of section 10(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(2)).

(g) NEPA.--Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) shall not apply with respect to section 402 and the issuance of any permit under this subsection during the seven year period beginning on the date of the implementation of the pilot program.

(h) Emergency Environmental Reviews – To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with Section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this section.

(i) Definitions- For the purposes of this section:

(1) ASSISTANT ADMINISTRATOR- The term 'Assistant Administrator' means the Assistant Administrator of National Oceanic and Atmospheric Administration, NOAA Fisheries

(2) DISTRICTS- The term 'districts' means the Oakdale Irrigation District and the South San Joaquin Irrigation District.

(3) PILOT PROGRAM- The term 'program' means the pilot non-native predator removal program established under this section.

(j) Sunset- The authorities provided under this section shall expire seven years after the implementation of the pilot program.

SEC. _____. CALFED INVASIVE SPECIES PILOT PROJECTS IN THE SACRAMENTO-SAN JOAQUIN BAY DELTA AND ITS TRIBUTARIES.

(a) **FINDINGS.**—Congress finds that—

(1) The Sacramento-San Joaquin Bay Delta and its Tributaries-

- (A) is one of the largest and most diverse estuaries in the United States,
- (B) is a natural treasure and a vital link in California's water system, and
- (C) has native biodiversity important to the ecological and economic systems of California, including water deliveries to agriculture, municipalities and to the environment and fisheries industries, and
- (D) has river tributaries important for rearing of salmon and steelhead smolts which experience a high level of predation from non-native species.

(2) Past, present and future introductions of invasive species are and will be a major factor in the decline of native pelagic and anadromous endangered or threatened species in the Sacramento-San Joaquin Bay Delta and its tributaries.

(3) More than 250 nonnative aquatic and plant species have been introduced into the Delta and its tributaries; of these, at least 185 species have become established and have altered the Sacramento-San Joaquin Bay Delta watershed's ecosystem.

(4) The Bay Delta Conservation Plan, the Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-run Chinook Salmon and Central Valley Spring-run Chinook Salmon and the Distinct Population Segment of the Central Valley Steelhead, the Recovery Plan for the Sacramento-San Joaquin Delta Native Fishes, and the multiple 5 year reviews of those plans all highlight that introduced nonnative invasive species are a significant factor in the decline of native fish species. These nonnative species, which include invasive aquatic vegetation, predators, and competitors, directly or indirectly cause biological stress for pelagic and anadromous endangered or threatened fish species in the Sacramento-San Joaquin Bay-Delta and its tributaries.

(5) If threats by nonnative species to native fish species are not addressed, there is a probability that native species of the Sacramento-San Joaquin Bay-Delta watershed's pelagic and anadromous community will go extinct.

(6) The CALFED legislation (Public Law 108-361) authorized a program to prevent, control, and eradicate invasive species, but it has not been implemented to date.

(7) A focused pilot program needs to be conducted within the Delta and river tributaries to reduce threats to native listed species by nonnative species. Reducing nonnative stressors on native listed species will contribute to both native listed species recovery and lowering the impact on downstream water users as those native listed species recover.

(b) PILOT PROJECTS TO IMPLEMENT CALFED INVASIVE SPECIES PROGRAM.

(1) Not later than January 1, 2017, the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall begin pilot projects to implement the invasive species program, including prevention, control and eradication authorized pursuant to Section 103(d)(6)(A)(iv) of Public Law 108-361. The pilot projects shall:

(A) seek to reduce invasive aquatic vegetation, predators, and other competitors which are major factors in the decline of native listed pelagic and anadromous species that occupy the Sacramento and San Joaquin Rivers and their tributaries and the Sacramento-San Joaquin Bay-Delta; and

(B) address how to remove, reduce, or control the effects of species including: Asiatic clams, silversides, gobies, Brazilian water weed, largemouth bass, smallmouth bass, striped bass, crappie, bluegill, white and channel catfish, and brown bullheads.

(2) The Secretary of the Interior's efforts, in consultation with the Secretary of Commerce, shall consist of the following phases:

(A) Phase 1. The Secretary of the Interior shall convene a panel of experts, including experts recommended by the State of California, to:

- (i) Identify the non-native species having the greatest impact on the viability of native pelagic and anadromous native listed species; and
- (ii) Identify the non-native species for which actions to reduce or control the population is determined to be possible; and
- (iii) Design a study to reduce the non-native species identified in clauses (i) and (ii) and prepare a cost estimate to implement this study.

(B) Phase 2. The Secretary of the Interior, in consultation with the Secretary of Commerce, shall test the general viability of nonnative reduction methods, including either direct predator removal or alteration of channel conditions, or some combination thereof, through pilot projects at multiple sites in addition to the projects on the Stanislaus River pursuant to Section 204, including known hotspots of predator aggregation or activity, such as:

- (i) Clifton Court Forebay,
- (ii) Central Valley Project intakes,
- (iii) Head of Old River,

- (iv) Georgiana Slough,
- (v) Old and Middle Rivers,
- (vi) Franks Tract,
- (vii) Paintersville Bridge,
- (viii) individual river tributaries important for wild populations of anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,
- (ix) Human-made submerged structures, and
- (x) Salvage release sites.

(C) Phase 3. If determined to be effective, the Secretary of the Interior, and the Secretary of Commerce, shall implement nonnative reduction methods at a larger number of sites, incorporating information learned during the first and second phase.

(3) The Secretary of the Interior shall collect data associated with the implementation of the projects above, and shall specifically collect data on the impact on

- (A) pelagic and anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,
- (B) water quality, and
- (C) water supply.

(4) After assessing the data described in subparagraph (2), the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall, if appropriate, annually recommend revisions to the reasonable and prudent alternatives contained in the salmonid biological opinion and the smelt biological opinion, or other administrative federal requirements governing the operation of the Central Valley Project and the State Water Project, that are likely to produce additional fishery, water quality, and water supply benefits.

(5) After the pilot projects are complete, a report describing the results of the program shall be used by the Assistant Administrator in making the survival estimates required by Section 203(f).

(c) **IMPLEMENTATION.** The Secretary of the Interior shall implement the CALFED program described in subpart (b) for at least a period of seven consecutive years beginning on the date of implementation.

(d) **REPORTING REQUIREMENTS.** The Secretary of the Interior shall provide reports to the Senate Committee on Environment and Public Works and the House Committee on Natural Resources on the following:

(1) No later than January 1, 2016, a description of the projects described in subpart (b), including the application for all necessary scientific research and species enhancement permits under section 10(a) (1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), and for the performance of the CALFED invasive species Program.

(2) Upon the completion of Phase 1 as described in subsection (b)(1)(A), a report describing its implementation and cost effectiveness.

(3) Two years after the project begins, a report describing the progress of the eradication of the nonnative species in the Sacramento-San Joaquin Bay-Delta and its tributaries and how such efforts have helped the Recovery Plans for endangered and threatened Anadromous and Pelagic Species in the Sacramento-San Joaquin Bay-Delta watershed and the associated cost effectiveness of each control measure.

(4) After the pilot projects are complete, a report describing the results of the program, including recommendations on whether the program should be continued, how the program may be taken to full scale in the most cost effective manner, and how a mitigation program for the Central Valley Project allowable under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) could be implemented.

(e) EMERGENCY ENVIRONMENTAL REVIEWS. To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this program.

SEC. _____. EXPEDITING WATER TRANSFERS.

(a). The Secretary shall take all necessary actions to facilitate and expedite transfers of Central Valley Project water in accordance with—

- (1) this Act;
- (2) any other applicable provision of the reclamation laws; and
- (3) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)

(b). To the extent feasible, transfers of Central Valley Project water shall be carried out to provide incidental benefit to listed salmonid species.

SEC. _____. OFFSET FOR STATE WATER PROJECT.

(a) Implementation Impacts.—Congress finds that operations of the Central Valley Project and State Water Project pursuant to the provisions of this Act will be consistent with the smelt biological opinion and the salmonid biological opinion. The Secretary of the Interior shall confer with the California Department of Fish and Wildlife in

connection with the implementation of this Act on potential impacts to any consistency determination for operations of the State Water Project issued pursuant to California Fish and Game Code section 2080.1.

(b) Additional Yield.--If, as a result of the application of this Act, the California Department of Fish and Wildlife requires take authorization under section 2081 of the California Fish and Game Code for operation of the State Water Project in a manner that directly or indirectly results in reduced water supply to the State Water Project as compared with the water supply available under the smelt biological opinion and the salmonid biological opinion, and as a consequence of the Department's action, Central Valley Project yield is greater than it would have been absent the Department's actions, then that additional yield shall be made available by the Central Valley Project to the State Water Project for delivery to State Water Project contractors to offset losses resulting from the Department's action.

(c) Notification Related to Environmental Protections.--The Secretary of the Interior shall immediately notify the Director of the California Department of Fish and Wildlife in writing if the Secretary of the Interior determines that implementation of the smelt biological opinion and the salmonid biological opinion consistent with this Act reduces environmental protections for any listed fish species covered by the opinions.

From: Petersen, Scott
Sent: Thursday, March 26, 2015 8:18 AM
To: Dennis Cardoza (dcardoza@foley.com); Costa, Jim; tbirmingham@westlandswater.org
CC: David Bernhardt
Subject: NorCal Dem Meeting w/ Enviro

This morning, Rep. Thompson called a meeting with the enviro community at 8:30 am ET regarding “rumors of drought legislation”. According to a source I have within the room, the Members in attendance were Huffman, Thompson and Garamendi, with staff from other NorCal Dem delegation Members present, including Matsui and McNerney for certain. The message from the Members to the enviros was that no drought bill is needed and this bill that’s being developed needs to be sunk in the Senate. They also requested that enviros find and give them language from the new bill.

An interesting sidebar is that all organizations in attendance are affiliated with Hal Candee. We know Hal has the language, the question is now whether he will try to use his clients to distribute the language to the NorCal delegation through a third party. My source indicated that Hal is attempting to organize the enviro groups behind the scenes, seemingly for Huffman. The specific enviro groups in attendance were The Nature Conservancy, Ducks Unlimited, Earth Justice and Audubon.

J. Scott Petersen, P.E.

Deputy Chief of Staff/Legislative Director
Rep. Jim Costa (CA-16)
1314 Longworth House Office Building
Washington, DC 20515
(202) 225-3341

From: Costa, Jim
Sent: Thursday, March 26, 2015 8:39 AM
To: Petersen, Scott
CC: Dennis Cardoza (dcardoza@foley.com); tbirmingham@westlandswater.org; David Bernhardt
Subject: Re: NorCal Dem Meeting w/ Enviro

Does John Watt & Jennifer Duck have this info ??? Jim

Sent from my iPhone

On Mar 26, 2015, at 11:17 AM, Petersen, Scott <Scott.Petersen@mail.house.gov> wrote:

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Rep. Jim Costa (CA-16)
1314 Longworth House Office Building
Washington, DC 20515
(202) 225-3341

From: DCardoza@foley.com
Sent: Thursday, March 26, 2015 8:55 AM
To: Costa, Jim
CC: Petersen, Scott; tbirmingham@westlandswater.org; David Bernhardt
Subject: Re: NorCal Dem Meeting w/ Enviro

Not from me but I told her Scott had a great outreach plan and offered to help in any way. Dennis

Congressman Dennis A. Cardoza
Foley & Lardner LLP
Suite 600
3000 K Street, NW<x-apple-data-detectors://0/0>
Washington, DC 20007-5109<x-apple-data-detectors://0/0>
Phone: 202.295-4015
Fax: 202.672.5399<tel:202.672.5399>
Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>>

Sent from my iPhone

The preceding email message may be confidential or protected by the attorney-client privilege. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this message in error, please (i) do not read it, (ii) reply to the sender that you received the message in error, and (iii) erase or destroy the message. Legal advice contained in the preceding message is solely for the benefit of the Foley & Lardner LLP client(s) represented by the Firm in the particular matter that is the subject of this message, and may not be relied upon by any other party. Internal Revenue Service regulations require that certain types of written advice include a disclaimer. To the extent the preceding message contains advice relating to a federal tax issue, unless expressly stated otherwise the advice is not intended or written to be used, and it cannot be used by the recipient or any other taxpayer, for the purpose of avoiding federal tax penalties, and was not written to support the promotion or marketing of any transaction or matter discussed herein.

On Mar 26, 2015, at 11:39 AM, Costa, Jim <JMC13@mail.house.gov<<mailto:JMC13@mail.house.gov>>> wrote:

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From: Petersen, Scott
Sent: Thursday, March 26, 2015 8:59 AM
To: 'DCardoza@foley.com'; Costa, Jim
CC: tbirmingham@westlandswater.org; David Bernhardt
Subject: RE: NorCal Dem Meeting w/ Enviro

Yes, Jennifer has that info. The outreach plan is with David and I and under development.

J. Scott Petersen, P.E.
Deputy Chief of Staff/Legislative Director
Rep. Jim Costa (CA-16)

-----Original Message-----

From: DCardoza@foley.com [mailto:DCardoza@foley.com]
Sent: Thursday, March 26, 2015 11:55 AM
To: Costa, Jim
Cc: Petersen, Scott; tbirmingham@westlandswater.org; David Bernhardt
Subject: Re: NorCal Dem Meeting w/ Enviro

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Congressman Dennis A. Cardoza
Foley & Lardner LLP
Suite 600
3000 K Street, NW<x-apple-data-detectors://0/0> Washington, DC 20007-5109<x-apple-data-detectors://0/0>
Phone: 202.295-4015
Fax: 202.672.5399<tel:202.672.5399>
Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>>

Sent from my iPhone

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From: Petersen, Scott
Sent: Monday, March 30, 2015 9:10 AM
To: Costa, Jim; Thomas Birmingham
CC: David Longly Bernhardt; Dennis Cardoza; Lopez, Juan; Zamora, Dianna
Subject: Fwd: Strategy Document
Attachments: 2015-03-25MEMO.OutreachStrategy_SPDBredits.docx (1).docx; ATT00001.htm

Good morning all, apparently the strategy document got stuck in my outbox on Friday. The updated and revised document is attached to this email for your review and comment.

Best, Scott

Sent from my iPhone, with brevity...

Begin forwarded message:

From: "J. Scott Petersen" <jscott.petersen@gmail.com>
Date: March 30, 2015 at 9:03:14 AM PDT
To: "scott.petersen@mail.house.gov" <scott.petersen@mail.house.gov>
Subject: Strategy Document

CONFIDENTIAL STAFF DRAFT

MEMO

To: Jim Costa
From: Scott Petersen
Date: March 25, 2015
Subject: Drought bill Introduction Strategy

In order to generate enough support statewide to enact drought legislation over the opposition of the Northern California Democratic delegation and likely active engagement from Leader Pelosi, efforts should be made to develop support from a diverse coalition of outside stakeholder organizations, media outlets, political leaders and state and federal agency officials. Given my understanding of the timing of introduction, outreach will need to be performed in conjunction with the development of the final bill, and will need to begin the week of March 30, 2015.

Outreach Plan

Gov. Jerry Brown

Governor Brown must be committed to supporting federal legislation as a means to an end to accomplish his own goals, as well as the Senator's goals. Rep. Costa will be meeting with the Governor's team, Nancy McFadden and Karla Nemeth, on April 1, 2015, to discuss the legislation and longer term fixes. Follow up on April 6, 2015, by Senator Feinstein with a hard ask for support, detailing any support garnered from other Democratic Members of the House and California legislature.

- Members of California Congressional Delegation
- Members of the State Legislature
- Local Elected Officials

Outside Stakeholder Organizations

Any meetings that need to set up with NGOS, Agriculture Groups, Water Agencies (ACWA, SLDMWA, Met and GCID to coordinate), business groups, energy stakeholders, public Health Organizations should be set up to occur over the next two weeks, and I am happy to assist with the effort of pulling meetings together. I've generated an initial list of agricultural groups with associated contact information to begin weekly outreach calls to coordinate a response strategy to the inevitable attacks from opposition groups.

CONFIDENTIAL STAFF DRAFT

Media Outlets

Editorial Boards

Newspaper	Responsible Party	Timeline
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Los Angeles Times	Feinstein/Costa/Cardenas	April 3
Sacramento Bee	Feinstein/Costa	April 5
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Outreach Plan

In order to generate additional support for the measure, outreach should be performed to the following groups:

- Members of Congress from California
- Members of the California State Legislature

CONFIDENTIAL STAFF DRAFT

California Democratic Member of Congress

Members of the California Democratic delegation will be willing to support the Senator's efforts if she and her allies are able to engage them and show them that the legislation is necessary to address the ongoing drought conditions. Support from Members in Southern California will be crucial to offset the opposition of the Northern California delegation. The suggested lead in Southern California is Rep. Tony Cardenas, with Rep. Juan Vargas in a second position in the Southern California delegation. Engagement by the Senator directly with Members will be critical in generating support amongst the delegation.

Member	Outreach	Notes
John Garamendi	1. Rep. Costa	
Jackie Speier		
Eric Swalwell	1. Dennis Cardoza 2. Rep. Costa 3. Senator Feinstein	
Mike Honda		
Zoe Lofgren	1. Senator Feinstein 2. Rep. Costa	
Sam Farr	1. Senator Feinstein 2. Rep. Costa	Cosponsored S.2169 in 113th
Lois Capps		
Julia Brownley	1. Senator Feinstein 2. Rep. Cardenas 3. Rep. Costa	
Judy Chu		
Adam Schiff	1. Dennis Cardoza 2. Metropolitan Water District 3. Senator Feinstein 4. Rep. Costa	
Tony Cardenas	1. Rep. Costa 2. Senator Feinstein 3. Maria Gutierrez 4. Dennis Cardoza	Cosponsored S.2169 in 113th
Brad Sherman		
Pete Aguilar	1. Rep. Cardenas 2. Rep. Costa 3. Senator Feinstein	

CONFIDENTIAL STAFF DRAFT

Member	Outreach	Notes
Grace Napolitano	1. Senator Feinstein 2. Metropolitan Water District 3. Maria Gutierrez	
Ted Lieu	1. Rep. Cardenas 2. Rep. Costa 3. Senator Feinstein	
Xavier Becerra	1. Metropolitan Water District 2. Maria Gutierrez 3. Rep. Costa 4. Senator Feinstein	
Norma Torres	1. Rep. Costa 2. Metropolitan Water District 3. Maria Gutierrez 4. Senator Feinstein	
Raul Ruiz	1. Rep. Costa 2. Metropolitan Water District 3. Maria Gutierrez 4. Senator Feinstein	
Karen Bass	1. Dennis Cardoza 2. Metropolitan Water District 3. Senator Feinstein	
Linda Sanchez	1. Dennis Cardoza 2. Metropolitan Water District 3. Maria Gutierrez 4. Rep. Costa 5. Senator Feinstein	
Lucille Roybal-Allard	1. Dennis Cardoza 2. Metropolitan Water District 3. Maria Gutierrez 4. Rep. Costa	
Mark Takano	1. Rep. Costa 2. Metropolitan Water District 3. Senator Feinstein	
Maxine Waters	1. Dennis Cardoza 2. Rep. Costa 3. Willie Brown 4. Senator Feinstein	

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Member	Outreach	Notes
Janice Hahn	1. Metropolitan Water District 2. Rep. Costa 3. Senator Feinstein	
Loretta Sanchez	1. Dennis Cardoza 2. Metropolitan Water District 3. Maria Gutierrez 4. Rep. Costa 5. Senator Feinstein	
Juan Vargas	1. Rep. Costa 2. Dennis Cardoza 3. Imperial ID/Coachella Valley 4. Maria Gutierrez 5. Ag Groups 6. Senator Feinstein	
Scott Peters	1. Rep. Cardenas 2. Rep. Costa 3. San Diego Water Authority 4. Senator Feinstein	
Susan Davis	1. Rep. Cardenas 2. Rep. Costa 3. San Diego Water Authority 4. Senator Feinstein	

Metropolitan Water District and San Diego Water Authority should take the lead on targeting Members of Congress in their service area and will perform initial outreach by a “Water 101” clinic during the recess.

State and Federal Agency Officials

- Develop talking points and preemptive rebuttals for distribution by April 6.
- Develop Op-ed for submission concurrent with introduction by April 6.
- Develop Section by section of draft that explains what the bill does and does not do by April 6.
- Develop statement to be issued concurrent with introduction by April 6.

CONFIDENTIAL STAFF DRAFT

Federal Agencies

Department of the Interior

- Bureau of Reclamation
- Fish and Wildlife Service

State of California Agencies

Department of Natural Resources

California Department of Food and Agriculture

From: Bernhardt, David L.
Sent: Monday, March 30, 2015 9:39 AM
To: 'Petersen, Scott'; Costa, Jim; Thomas Birmingham
CC: Dennis Cardoza; Lopez, Juan; Zamora, Dianna
Subject: RE: Strategy Document
Attachments: 2015-03-25MEMO OutreachStrategy_SPDBredits docx (1) (2).docx

Scott: I have modified one heading for clarity.

David

From: Petersen, Scott [mailto:Scott.Petersen@mail.house.gov]
Sent: Monday, March 30, 2015 12:10 PM
To: Costa, Jim; Thomas Birmingham
Cc: Bernhardt, David L.; Dennis Cardoza; Lopez, Juan; Zamora, Dianna
Subject: Fwd: Strategy Document

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Date: March 30, 2015 at 9:03:14 AM PDT
To: "scott.petersen@mail.house.gov" <scott.petersen@mail.house.gov>
Subject: Strategy Document

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CONFIDENTIAL STAFF DRAFT

Member	Outreach	Notes
Grace Napolitano	1. Senator Feinstein 2. Metropolitan Water District 3. Maria Gutierrez	
Ted Lieu	1. Rep. Cardenas 2. Rep. Costa 3. Senator Feinstein	
Xavier Becerra	1. Metropolitan Water District 2. Maria Gutierrez 3. Rep. Costa 4. Senator Feinstein	
Norma Torres	1. Rep. Costa 2. Metropolitan Water District 3. Maria Gutierrez 4. Senator Feinstein	
Raul Ruiz	1. Rep. Costa 2. Metropolitan Water District 3. Maria Gutierrez 4. Senator Feinstein	
Karen Bass	1. Dennis Cardoza 2. Metropolitan Water District 3. Senator Feinstein	
Linda Sanchez	1. Dennis Cardoza 2. Metropolitan Water District 3. Maria Gutierrez 4. Rep. Costa 5. Senator Feinstein	
Lucille Roybal-Allard	1. Dennis Cardoza 2. Metropolitan Water District 3. Maria Gutierrez 4. Rep. Costa	
Mark Takano	1. Rep. Costa 2. Metropolitan Water District 3. Senator Feinstein	
Maxine Waters	1. Dennis Cardoza 2. Rep. Costa 3. Willie Brown 4. Senator Feinstein	

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Member	Outreach	Notes
Janice Hahn	1. Metropolitan Water District 2. Rep. Costa 3. Senator Feinstein	
Loretta Sanchez	1. Dennis Cardoza 2. Metropolitan Water District 3. Maria Gutierrez 4. Rep. Costa 5. Senator Feinstein	
Juan Vargas	1. Rep. Costa 2. Dennis Cardoza 3. Imperial ID/Coachella Valley 4. Maria Gutierrez 5. Ag Groups 6. Senator Feinstein	
Scott Peters	1. Rep. Cardenas 2. Rep. Costa 3. San Diego Water Authority 4. Senator Feinstein	
Susan Davis	1. Rep. Cardenas 2. Rep. Costa 3. San Diego Water Authority 4. Senator Feinstein	

Metropolitan Water District and San Diego Water Authority should take the lead on targeting Members of Congress in their service area and will perform initial outreach by a “Water 101” clinic during the recess.

Staff Activities

- Develop talking points and preemptive rebuttals for distribution by April 6.
- Develop Op-ed for submission concurrent with introduction by April 6.
- Develop Section by section of draft that explains what the bill does and does not do by April 6.
- Develop statement to be issued concurrent with introduction by April 6

CONFIDENTIAL STAFF DRAFT

State and Federal Agency Officials

Federal Agencies

Department of the Interior

- Bureau of Reclamation
- Fish and Wildlife Service

State of California Agencies

Department of Natural Resources

California Department of Food and Agriculture

From: Tom Birmingham
Sent: Tuesday, March 31, 2015 11:03 AM

To: 'Watts, John (Feinstein)'

CC: 'Bernhardt, David L.'

Subject: Requested Provisions

Attachments: Temporaryflexoption1trequest.docx;

OPTION2TEMPFLEXMODIFIEDTOINCLUDECALISTEDSPECIES.docx; Management of Reverse Flow Section.docx; Calender Based Triggers.docx

John,

Per our conversation, attached are documents on the topics we discussed. With respect to the winter storms pumping provision, there are two options, which were drafted by David Bernhardt. David highlighted the text showing the proposed modification for both versions, but the change is identical in both verions. Please let me know if you have any questions.

Tom

**OPTION 1: DROP REFERENCES TO PUMPING AT -
7500 CFS AND 28 DAYS TO ADDRESS STATE'S
CONCERNS**

**SEC. 10_. TEMPORARY OPERATIONAL FLEXIBILITY
DURING PERIODS OF HIGH OUTFLOW.**

- (a) In General- Consistent with avoiding additional adverse effects upon listed fish species beyond the range of those authorized under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and other environmental protections under subsection (d), the Secretaries shall use the emergency consultation provisions of the Endangered Species Act and its implementing regulations to implement temporary changes in the operating criteria for the biological opinions during days of high outflow as defined in subsection (b) that would improve water supplies for the Central Valley Project and the State Water Project.
- (b) Days of high outflow. - Subsection (a) shall be authorized on any day or days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey.
- (c) Compliance With ESA Authorizations- In carrying out this section, the Secretaries may continue to impose any requirements under the smelt and salmonid biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid additional adverse effects on a listed fish species beyond the range of those authorized under the Endangered Species Act of 1973.
- (d) Other Environmental Protections-
 - (1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law, including State Water Resources

Control Board Decision 1641, as it may be implemented in any given year.

(2) During the first flush of sediment out of the Delta in each water year, and provided that such determination is based upon objective evidence, OMR flow may be managed at rates less negative than -5000 cubic feet per second for a minimum duration to avoid movement of adult Delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants.

(3) This section shall not affect the application of the salmonid biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those authorized under the Endangered Species Act of 1973. In addition to any other actions to benefit water supply, the Secretary and the Secretary of Commerce shall consider allowing through-Delta water transfers to occur during this period.

(4) During operations under this section, the Secretary of the Interior, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to ensure incidental take levels are not exceeded, and to identify potential negative impacts and actions, if any, necessary to avoid impacts of the temporary operational flexibility to species listed under the Endangered Species Act of 1973.

(5) During operations under this section, the Secretaries shall confer with the Director of the California Department of Fish and Wildlife regarding changes to operations, if any beyond the range of those authorized under the Endangered Species Act of 1973, regarding the potential impacts to species listed under

the California Endangered Species Act that are not listed under the Endangered Species Act 1973.

(f) Emergency Consultation-

(1) The Secretary of the Interior shall use the emergency consultation procedures under the Endangered Species Act of 1973 and its implementing regulation at section 402.05, title 50, Code of Federal Regulations, to temporarily adjust the operating criteria under the biological opinions,

- (A) no more than necessary to achieve the purposes of this section consistent with the environmental protections in subsections (c) and (d); and
- (B) including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day and 14-day running averages of tidally filtered daily Old and Middle River flow requirements under the biological opinions.

(2) At the conclusion of informal consultation, the Secretary of the Interior shall not reinitiate consultation on these adjusted operations if the effects on listed fish species of these operations under this section remain within the range of those authorized under the Endangered Species Act.

(g) Level of Detail Required for Analysis- In articulating the determinations required under this section, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short time frame permitted for timely decision-making in response to changing conditions in the Delta.

OPTION 2: TECHNICAL MODIFICATIONS TO EXISTING LANGUAGE

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- (b) High outflow days - The temporary operational flexibility described in subsection (a) shall be authorized on days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey.
- (c) Compliance With ESA Authorizations- In carrying out this section, the Secretaries may continue to impose any requirements under the smelt and salmonid biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid additional adverse effects on a listed fish species beyond the range of those authorized under the Endangered Species Act of 1973.
- (d) Other Environmental Protections-
 - (1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law, including State Water Resources Control Board Decision 1641, as it may be implemented in any given year.
 - (2) During the first flush of sediment out of the Delta in each water year, OMR flow may be managed at rates less negative than -5000 cubic feet per second for a minimum duration to

avoid movement of adult Delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants, provided that the Secretaries explain the data examined and the connection between those data and the choice they made.

(3) This section shall not affect the application of the salmonid biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those authorized under the Endangered Species Act of 1973. In addition to any other actions to benefit water supply, the Secretary and the Secretary of Commerce shall consider allowing through-Delta water transfers to occur during this period.

(4) During operations under this section, the Secretary of the Interior, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to ensure incidental take levels are not exceeded, and to identify potential negative impacts and actions, if any, necessary to mitigate impacts of the temporary operational flexibility to species listed under the Endangered Species Act of 1973.

(5) During operations under this section, the Secretaries shall confer with the Director of the California Department of Fish and Wildlife regarding changes to operations, if any beyond the range of those authorized under the Endangered Species Act of 1973, regarding the potential impacts to species listed under the California Endangered Species Act that are not listed under the Endangered Species Act 1973.

(e) Technical Adjustments to Target Period- If, during a high outflow day as defined in subsection (b) based on their review of environmental criteria in subsections (a), (c) and (d), the Secretaries authorize the Central Valley Project and the State Water Project to operate at levels that combined result in Old and Middle River flows

- (1) no more negative than - -5000 cubic feet per second, that day shall not count toward the 28 cumulative days specified in subsection (a);
- (2) between -5001 cubic feet per second and -6249 cubic feet per second, that day shall count as ½ day toward the 28 cumulative days specified in subsection (a); and
- (3) between -6250 cubic feet per second and -7500 cubic feet per second, that day shall count as 1 day toward the 28 cumulative days specified in subsection (a).

(f) Emergency Consultation; Effect on Running Averages-

- (1) If necessary to implement the provisions of this section, the Secretary of the Interior shall use the emergency consultation procedures under the Endangered Species Act of 1973 and its implementing regulation at section 402.05, title 50, Code of Federal Regulations, to temporarily adjust the operating criteria under the biological opinions, solely for the 28 cumulative days of temporary operational flexibility--
 - (A) no more than necessary to achieve the purposes of this section consistent with the environmental protections in subsections (c) and (d); and
 - (B) including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day and 14-day running averages of tidally filtered daily Old and Middle River flow requirements under the biological opinions.
- (2) At the conclusion of the 28 cumulative days of temporary operational flexibility, the Secretary of the Interior shall not reinitiate consultation on these adjusted operations if the effects on listed fish species of these operations under this section remain within the range of those authorized under the Endangered Species Act.

(g) Level of Detail Required for Analysis- In articulating the determinations required under this section and section 102, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short time frame

permitted for timely decision-making in response to changing conditions in the Delta.

SEC. _____. MANAGEMENT OF REVERSE FLOW UNDER THE BIOLOGICAL OPINIONS

- (a) In implementing the provisions of the smelt biological opinion biological opinion, or any successor biological opinion, pertaining to management of reverse flow in the Old and Middle Rivers, the Secretary shall not restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers that is less negative than the highest negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 unless a less negative reverse flow rate is reasonably required to avoid adverse impacts beyond those considered under the smelt biological opinion.
- (b) Any decision to restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers less negative than the highest negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 shall be explained in writing, including an explanation of the data examined and the connection between those data and the choice made, and promptly posted on the Fish and Wildlife Service website.

SEC. _____. CALENDAR BASED TRIGGERS

Notwithstanding any calendar based trigger described in the salmonid biological opinion Reasonable and Prudent Alternative, operations of the Central Valley Project and the State Water Project shall not be limited by the Reasonable and Prudent Alternative unless current monitoring data indicate that the actions described in the Reasonable and Prudent Alternative are reasonably required to avoid the impacts identified by the salmonid biological opinion.

From: Tom Birmingham
Sent: Tuesday, March 31, 2015 11:14 AM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: Re-consultation

John,

The following is excerpted from the Section 7 Consultation Handbook:

Section 7 regulations outline four general conditions for reinitiating formal consultation: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) the action is modified in a manner causing effects to listed species or critical habitat not previously considered; (4) a new species is listed or critical habitat designated that may be affected by the action.

I do not believe the draft legislation would result in any of these conditions.

Tom

From: Tom Birmingham
Sent: Tuesday, March 31, 2015 12:19 PM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: FW: Requested Provisions
Attachments: Temporaryflexoption1trequest.docx;
OPTION2TEMPFLEXMODIFIEDTOINCLUDECALISTEDSPECIES.docx; Management of Reverse Flow
Section.docx

Attached is the revised language.

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Tuesday, March 31, 2015 11:03 AM
To: 'Watts, John (Feinstein)'
Cc: 'Bernhardt, David L.'
Subject: Requested Provisions

John,

Per our conversation, attached are documents on the topics we discussed. With respect to the winter storms pumping provision, there are two options, which were drafted by David Bernhardt. David highlighted the text showing the proposed modification for both versions, but the change is identical in both versions. Please let me know if you have any questions.

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 - (A) no more than necessary to achieve the purposes of this section consistent with the environmental protections in subsections (c) and (d); and
 - (B) including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day and 14-day running averages of tidally filtered daily Old and Middle River flow requirements under the biological opinions.
- (2) At the conclusion of the 28 cumulative days of temporary operational flexibility, the Secretary of the Interior shall not reinitiate consultation on these adjusted operations if the effects on listed fish species of these operations under this section remain within the range of those authorized under the Endangered Species Act.

(g) Level of Detail Required for Analysis- In articulating the determinations required under this section and section 102, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short time frame

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BIOLOGICAL OPINIONS**

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From: Tom Birmingham
Sent: Tuesday, March 31, 2015 3:42 PM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: Transfer Provision
Attachments: Transfer Window.docx

John,

Pursuant to your request, I drafted the attached provision expanding the transfer window. You will note that I modeled this requirements for this section on the requirements for the 1:1 April – May I/E ratio provision.

Tom

SEC. _____. TRANSFER WINDOW

Subject to the limitations on maximum transfer amounts, the period for exports for transfers shall include October 1 through November 15, if the following conditions are met:

- (A) the Secretary of the Interior determines that the environmental effects of the export of transfers are consistent with effects permissible under applicable law (including regulations); and,
- (B) Delta conditions are suitable to allow the export for transfers consistent with conditions imposed by Central Valley Project and the State Water Project water right permits or licenses.

From: Watts, John (Feinstein)
Sent: Tuesday, March 31, 2015 4:46 PM
To: Tom Birmingham; Bernhardt, David L.
Subject: Confidential current draft bill language
Attachments: bill 3-31-15 v1.docx

Tom and David,

If you could take a look at this this evening and let me know if anything looks awry to you, I would appreciate it.

I have included somewhat erratic redlining of changes (not all new language in redlined).

Take a look at the table of contents and review those sections that seem new or particularly important to you.

Three points to note (I am sure there are other noteworthy points, but these occur to me at the moment):

- Note the changes to subsection (b) of the Offset for the State Water Project section, which Tom Gibson requested.
- At the State's request (probably to meet their goal of reducing litigation risk), I moved language on the "Level of Detail Required for Analysis" from the end of the "Temporary Operational Flexibility" section to a new section in Title IV where it will be generally applicable to the bill.
- I included some of Stuart Somach's proposed edits to the Area of Origin and No Redirected Adverse Impacts sections, which condense these sections somewhat at the State's request (likely not enough), and I deleted the "no financial impacts" language because we are no longer authorizing new water supply projects under this bill (only operational changes), so there should be no O&M impacts on CVP contractors. We are going to have to go over these sections with a broad group of interested parties.

S. _____

California Emergency Drought Relief Act of 2015

114th CONGRESS
1st Session

IN THE SENATE OF THE UNITED STATES

April ___, 2015

AN ACT

To provide short-term water supplies to drought-stricken California.

*Be it enacted by the Senate and House of Representatives of the United States of America
in Congress assembled,*

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

- (a) Short Title- This Act may be cited as the “California Emergency Drought Relief Act of 2015”.
- (b) Table of Contents- The table of contents for this Act is as follows:
 - Sec. 1. Short title; table of contents.

TITLE I--CALIFORNIA EMERGENCY DROUGHT RELIEF

- Sec. 101. Definitions.
- Sec. 102. Operations under biological opinions.
- Sec. 103. Management of reverse flow under the biological opinions.
- Sec. 104. Inflow / Export ratio for voluntary transfers.
- Sec. 105. Other emergency projects.
- Sec. 106. Temporary operational flexibility during periods of high outflow.
- Sec. 107. Calendar-based triggers.
- Sec. 108. Transfer window.
- Sec. 109. Progress report.
- Sec. 110. Status of surface storage studies.

TITLE II—ACTIONS TO BENEFIT FISH AND REFUGES

- Sec. 201. Actions to benefit fish.
- Sec. 202. Pilot program to protect native anadromous fish in the Stanislaus River.
- Sec. 203. CALFED invasive species pilot projects in the Sacramento-San Joaquin Bay Delta and its tributaries.

Sec. 204. Actions to benefit refuges.
Sec. 205. Use of CVPIA Restoration Fund.

TITLE III--PROTECTION OF THIRD-PARTY WATER RIGHTS

Sec. 301. Offset for State Water Project.
Sec. 302. Area of origin protections.
Sec. 303. No redirected adverse impacts.
Sec. 304. Allocations for Sacramento Valley Water Service Contractors.

TITLE IV--MISCELLANEOUS PROVISIONS

Sec. 401. Effect on existing obligations.
Sec. 402. Level of detail required for analysis.
Sec. 403. Termination of authorities.

TITLE I--CALIFORNIA EMERGENCY DROUGHT RELIEF

SEC. 101. DEFINITIONS.

In this title:

- (1) CENTRAL VALLEY PROJECT- The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (106 Stat. 4707).
- (2) DELTA- The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.
- (3)
SALMONID BIOLOGICAL OPINION- The term “salmonid biological opinion”
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- (4) SECRETARIES- The term “Secretaries” means--
 - (A) the Secretary of Commerce; and
 - (B) the Secretary of the Interior.
- (5) SMELT BIOLOGICAL OPINION- The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008.
- (6) STATE- The term “State” means the State of California.
- (7) STATE WATER PROJECT- The term “State Water Project” means the water project described by California Water Code section 11550 et seq. and operated by the California Department of Water Resources.

SEC. 102. OPERATIONS UNDER BIOLOGICAL OPINIONS.

Operating within the existing smelt biological opinion and the salmonid biological opinion; based on information and experience gained since the adoption of those biological opinions (such as management and monitoring of turbidity to protect Delta smelt and water supplies simultaneously, and improved understanding of salmon migration behaviors); within the flexibility inherent in the Biological Opinions; consistent with applicable law (including regulations); and subject to the limitations imposed in Sections 302 and 303 of this Act; the Secretaries shall direct or allow operations of the Central Valley Project and the State Water Project to provide the maximum supply of water possible under current hydrologic conditions.

SEC. 103. MANAGEMENT OF REVERSE FLOW UNDER THE BIOLOGICAL OPINION

- (a) In implementing the provisions of the smelt biological opinion biological opinion, or any successor biological opinion, pertaining to management of reverse flow in the Old and Middle Rivers, the Secretary shall not restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers that is less negative than the highest negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 absent a determination that a less negative reverse flow rate is reasonably required to avoid adverse impacts beyond those considered under the smelt biological opinion.
- (b) Any determination to restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers less negative than the highest negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 shall be explained in writing, including an explanation of the data examined and the connection between those data and the choice made, and promptly posted on the Fish and Wildlife Service website.

SEC. 104. INFLOW / EXPORT RATIO FOR VOLUNTARY TRANSFERS

The Secretaries shall adopt a 1:1 inflow to export ratio for the increment of increased flow of the San Joaquin River, as measured as a 3-day running average at Vernalis during the period from April 1 through May 31, resulting from voluntary sale, transfers, or exchanges of water from agencies with rights to divert water from the San Joaquin River or its tributaries, if the following conditions are met:

- (1) a proposed sale, transfer, or exchange under this paragraph may only proceed if the Secretary of the Interior determines that the environmental effects of the proposed sale, transfer, or exchange are consistent with effects permissible under applicable law (including regulations);
- (2) Delta conditions are suitable to allow movement of the acquired, transferred, or exchanged water through the Delta consistent with the Central Valley Project's and the State Water Project's permitted water rights; and
- (3) such voluntary sale, transfer or exchange of water results in flow that is in addition to flow that otherwise would occur in the absence of the voluntary sale, transfer or exchange.

SEC. 105. OTHER EMERGENCY PROJECTS

- (a) In General- The applicable Secretary shall--

- (1) authorize and implement actions to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using the best available science and findings from the United States Geological Survey on diurnal behavior of juvenile salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits, consistent with the California

Endangered Species Act and operational criteria and monitoring set forth in the California State Water Resources Control Board's Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions, effective January 31, 2014, or a successor order;

(2)(A) issue all necessary permit decisions under the authority of the Secretaries using the shortest practicable process provided under applicable law (including regulations) to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality for Central Valley Project and State Water Project contractors and other water users, which barriers or gates should provide benefits for species protection and in-Delta water user water quality; and

(B) The barriers and gates to be considered under Subparagraph (A) shall be designed in a manner such that the effects of the project shall not trigger formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536);

(3) complete all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on water transfer requests associated with voluntarily fallowing nonpermanent crops in the State, using the shortest practicable process provided under applicable law (including regulations);

(4) allow any North of Delta agricultural water service or refuge service contractor with unused Central Valley Project water to take delivery of such unused water through April 15, of the contract year immediately following the contract year in which such water was allocated, if--

- (A) the contractor requests the extension; and
- (B) the requesting contractor certifies that, without the extension, the contractor would have insufficient supplies to adequately meet water delivery obligations; and

(5) implement instream and offsite projects in the Delta and upstream in the Sacramento River and San Joaquin basins, in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to actions taken under this Act.

(b) Accelerated Project Decision and Elevation-

(1) IN GENERAL- Upon the request of the State, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions

relating to a Federal project or operation to provide additional water supplies or address emergency drought conditions pursuant to subsection (a) and section 102, including but not limited to the placement of temporary rock barriers, water transfers and temporary drought relief water conveyance infrastructure.

(2) REQUEST FOR RESOLUTION-

(A) IN GENERAL- Upon the request of the Governor, the Secretary of Commerce, or the head

of another Federal agency responsible for carrying out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide emergency water supplies.

(B) MEETING- The Secretary of the Interior shall convene a meeting requested under subparagraph (A) not later than 7 days after receiving the meeting request.

(3) NOTIFICATION- Upon receipt of a request for a meeting under this subsection, the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including the project to be reviewed and the date for the meeting.

(4) DECISION- Not later than 10 days after the date on which a meeting is requested under paragraph (2), the head of the relevant Federal agency shall issue a final decision on the project in writing.

(5) MEETING CONVENED BY SECRETARY- The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

SEC. 106. TEMPORARY OPERATIONAL FLEXIBILITY DURING PERIODS OF HIGH OUTFLOW.

(a) In General- Consistent with avoiding additional adverse effects upon listed fish species beyond the range of those authorized under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and other environmental protections under subsection (d), the Secretaries shall use the emergency consultation provisions of the Endangered Species Act and its implementing regulations to implement temporary changes in the operating criteria for the biological opinions during days of high outflow as defined in subsection (b) that would improve water supplies for the Central Valley Project and the State Water Project.

(b) Days of high outflow. - Subsection (a) shall be authorized on any day or days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey.

(c) Compliance With ESA Authorizations.- In carrying out this section, the Secretaries may continue to impose any requirements under the smelt and salmonid biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid additional adverse effects on a listed fish species beyond the range of those authorized under the Endangered Species Act of 1973.

(d) Other Environmental Protections.-

(1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law, including State Water Resources Control Board Decision 1641, as it may be implemented in any given year.

(2) During the first flush of sediment out of the Delta in each water year, and provided that such determination is based upon objective evidence, OMR flow may be managed at rates less negative than -5000 cubic feet per second for a minimum duration to avoid movement of adult Delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants.

(3) This section shall not affect the application of the salmonid biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those authorized under the Endangered Species Act of 1973. In addition to any other actions to benefit water supply, the Secretary and the Secretary of Commerce shall consider allowing through-Delta water transfers to occur during this period.

(4) During operations under this section, the Secretary of the Interior, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to ensure incidental take levels are not exceeded, and to identify potential negative impacts and actions, if any, necessary to avoid impacts of the temporary operational flexibility to species listed under the Endangered Species Act of 1973.

(5) During operations under this section, the Secretaries shall confer with the Director of the California Department of Fish and Wildlife regarding the potential impacts to species listed under the California Endangered Species Act that are not listed under the Endangered Species Act 1973.

(e) Emergency Consultation.-

(1) The Secretary of the Interior shall use the emergency consultation procedures under the Endangered Species Act of 1973 and its implementing regulation at section 402.05, title 50, Code of Federal Regulations, to temporarily adjust the operating criteria under the biological opinions,

- (A) no more than necessary to achieve the purposes of this section consistent with the environmental protections in subsections (c) and (d); and
 - (B) including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day and 14-day running averages of tidally filtered daily Old and Middle River flow requirements under the biological opinions.
- (2) At the conclusion of informal consultation, the Secretary of the Interior shall not reinitiate consultation on these adjusted operations if the effects on listed fish species of these operations under this section remain within the range of those authorized under the Endangered Species Act.

SEC. 107. CALENDAR-BASED TRIGGERS.

Notwithstanding any calendar based trigger described in the salmonid biological opinion Reasonable and Prudent Alternative, operations of the Central Valley Project and the State Water Project shall not be limited by the Reasonable and Prudent Alternative unless current monitoring data indicate that the actions described in the Reasonable and Prudent Alternative are reasonably required to avoid the impacts identified by the salmonid biological opinion.

SEC. 108. TRANSFER WINDOW.

Subject to the limitations on maximum transfer amounts, the period for exports for transfers shall include October 1 through November 15, if the following conditions are met:

- (a) the Secretary of the Interior determines that the environmental effects of the export of transfers are consistent with effects permissible under applicable law (including regulations); and,
- (b) Delta conditions are suitable to allow the export for transfers consistent with conditions imposed by Central Valley Project and the State Water Project water right permits or licenses.

SEC. 109. PROGRESS REPORT.

Ninety days after the date of the enactment of this Act and every 90 days thereafter, the Secretaries shall provide a progress report describing the implementation of sections 102 and 103 to the Committee on Natural Resources in the House of Representatives and the Committee on Energy and Natural Resources in the Senate.

SEC. 110. STATUS OF SURFACE STORAGE STUDIES.

One year after the date of the enactment of this Act, the Secretary of the Interior shall provide a progress report on the status of feasibility studies undertaken pursuant to clauses (i) and (ii) of section 103(d)(1)(A) of the Water Supply, Reliability, and Environmental Improvement Act (Public Law 108-361) to the Committee on Natural Resources in the House of Representatives and the Committee on Energy and Natural Resources in the Senate. The report shall include timelines for study completion, draft environmental impact statements, final environmental impact statements, and Records of Decision.

TITLE II—ACTIONS TO BENEFIT FISH AND REFUGES

SEC. 201. ACTIONS TO BENEFIT FISH.

[This section would include the proposals to benefit endangered smelt and salmon, such as:

- Finding ways to keep the salmon from going through the Delta Cross Channel Gates;
- Reducing the propensity of predators to congregate in certain areas to prey on endangered fish;
- Identifying alternative ways to release hatchery salmon so they have higher survival rates;
- Reducing lighting intensity of structures near / around the river so predators cannot see endangered fish prey as easily;
- Trap and barge juvenile salmon to help them avoid predators and other hazards in the Delta as they migrate to the ocean.]

SEC. 202. PILOT PROGRAM TO PROTECT NATIVE ANADRAMOUS FISH IN THE STANISLAUS RIVER.

(a) Establishment of Non-native Predator Fish Removal Program- The Assistant Administrator and districts, in consultation with the United States Fish and Wildlife Service and the California Department of Fish and Wildlife, shall jointly develop and conduct a pilot non-native predator fish removal program to remove non-native striped bass, smallmouth bass, largemouth bass, black bass, and other non-native predator fishes from the Stanislaus River. The pilot program shall--

- (1) be scientifically based;
- (2) include methods to quantify the number and size of predator fishes removed each year, the impact of such removal on the overall abundance of predator fishes, and the impact of such removal on the populations of juvenile anadromous fish found in the Stanislaus River by, among other things, evaluating the number of juvenile anadromous fish that migrate past the rotary screw trap located at Caswell;
- (3) among other methods, use wire fyke trapping, portable resistance board weirs, and boat electrofishing, which are among the most effective predator collection techniques that minimize effects to native anadromous fish;
- (4) be developed, including the application for all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), for the performance of the pilot program, not later than 6 months after the date of the enactment of this Act;
- (5) be implemented as quickly as possible following the issuance of all necessary scientific research and species enhancement permits needed to begin the pilot program; and
- (6) be implemented for a period of seven consecutive calendar years.

(b) Management- The management of the pilot program shall be the joint responsibility of the Assistant Administrator and the districts. Such parties shall work collaboratively to ensure the performance of the pilot program, and shall discuss and agree upon, among other things, changes in the structure, management, personnel, techniques, strategy, data collection, reporting and conduct of the pilot program.

(c) Conduct-

(1) IN GENERAL- By agreement between the Assistant Administrator and the participating districts, the pilot program may be conducted by their own personnel, qualified private contractors hired by the districts, personnel of, on loan to, or otherwise assigned to NOAA Fisheries, or a combination thereof.

(2) PARTICIPATION BY NOAA FISHERIES- In the event the districts elect to conduct the program using their own personnel or qualified private contractors hired by them, the Assistant Administrator has the option to assign an employee of, on loan to, or otherwise assigned to NOAA Fisheries, to be present for all activities performed in the field. Such presence shall ensure compliance with the agreed upon elements specified in subsection (b). The districts shall pay 100 percent of the cost of such participation as specified in subsection (d).

(3) TIMING OF ELECTION- The districts shall notify the Assistant Administrator of their election on or before October 15 of each calendar year of the pilot program, which election shall apply to the work performed in the subsequent calendar year.

(d) Funding-

(1) CONTRIBUTED FUNDS- The Assistant Administrator is authorized to receive and expend contributed funds for the purposes for which the funds contributed in a like manner as if said sums had been specifically appropriated for said purposes.

(2) ANNUAL FUNDING- The districts shall be responsible through contributed funds for 100 percent of the cost of the pilot program. On or before December 1 of each year of the pilot program, the Assistant Administrator shall submit to the districts an estimate of the cost to be incurred by the NOAA Fisheries in the following calendar year, if any, including the cost of any data collection and posting under subsection (e). If an amount equal to the estimate is not provided through contributed funds, or any other fund as directed by the Assistant Administrator, by the districts on or before December 31 of each year, (a) the NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled, and (b) the districts shall be prohibited from conducting any aspect of the pilot program, until full payment is made by the districts.

(3) ACCOUNTING- On or before September 1 of each calendar year, the Assistant Administrator shall provide an accounting of the prior calendar year's expenses to the districts. If the estimate paid by the districts was less than the actual costs incurred by the NOAA Fisheries, the districts shall have until September 30 of that calendar year to pay the difference to the fund indentified by the Assistant Administrator in subsection (d)(1), or NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled. If the estimate paid by the districts was greater than the actual costs incurred by the NOAA Fisheries, then a credit shall be provided to the districts, which

shall be deducted from the estimate payment the districts must make for the work performed by the NOAA Fisheries, if any, in the next calendar year.

Administrator, by the districts on or before December 31 of each year, (a) the NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled, and (b) the districts shall be prohibited from conducting any aspect of the pilot program, until full payment is made by the districts.

(e) Reporting and Evaluation-

(1) IN GENERAL- On or before the 15th day of each month, the Assistant Administrator shall post on the website of the NOAA Fisheries a tabular summary of the raw data collected in the prior month.

(2) REPORT- On or before June 30 of the calendar year following the completion of the program, the Assistant Administrator and districts shall jointly submit a report for peer review that--

- (A) discusses the findings and conclusions of the pilot program;
- (B) synthesizes the data collected under paragraph (1); and
- (C) makes recommendations for further study and action.

(f) Permits Process-

(1) Not later than 180 days after filing of an application, the Assistant Administrator and the districts, the Secretary of the Interior, the Secretary of Commerce, or both, as appropriate, shall issue all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act (16 U.S.C. 1539(a)(1)), for the performance of the pilot program.

(2) All permits issued shall be in the name of the NOAA Fisheries and the districts.

(3) Districts may delegate the authority to administer the permit authority to any qualified private contractor retained in accordance with subsection (c).

(4) The pilot program, including amendments thereto by the appropriate Federal and State agencies, shall be designed to meet the requirements of a conservation plan that complies with the requirements of Section 10(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(2)).

(h) Emergency Environmental Reviews – To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with Section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this section.

(i) Definitions- For the purposes of this section:

(1) ASSISTANT ADMINISTRATOR- The term 'Assistant Administrator' means the Assistant Administrator of National Oceanic and Atmospheric Administration, NOAA Fisheries

- (2) DISTRICTS- The term 'districts' means the Oakdale Irrigation District and the South San Joaquin Irrigation District.
- (3) PILOT PROGRAM- The term 'program' means the pilot non-native predator removal program established under this section.
- (j) Sunset- The authorities provided under this section shall expire seven years after the implementation of the pilot program.

SEC. 203. CALFED INVASIVE SPECIES PILOT PROJECTS IN THE SACRAMENTO-SAN JOAQUIN BAY DELTA AND ITS TRIBUTARIES.

(a) FINDINGS.—Congress finds that—

- (1) The Sacramento-San Joaquin Bay Delta and its Tributaries-
- (A) is one of the largest and most diverse estuaries in the United States,
 - (B) is a natural treasure and a vital link in California's water system, and
 - (C) has native biodiversity important to the ecological and economic systems of California, including water deliveries to agriculture, municipalities and to the environment and fisheries industries, and
 - (D) has river tributaries important for rearing of salmon and steelhead smolts which experience a high level of predation from non-native species.

(2) Past, present and future introductions of invasive species are and will be a major factor in the decline of native pelagic and anadromous endangered or threatened species in the Sacramento-San Joaquin Bay Delta and its tributaries.

(3) More than 250 nonnative aquatic and plant species have been introduced into the Delta and its tributaries; of these, at least 185 species have become established and have altered the Sacramento-San Joaquin Bay Delta watershed's ecosystem.

(4) The Bay Delta Conservation Plan, the Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-run Chinook Salmon and Central Valley Spring-run Chinook Salmon and the Distinct Population Segment of the Central Valley Steelhead, the Recovery Plan for the Sacramento-San Joaquin Delta Native Fishes, and the multiple 5 year reviews of those plans all highlight that introduced nonnative invasive species are a significant factor in the decline of native fish species. These nonnative species, which include invasive aquatic vegetation, predators, and competitors, directly or indirectly cause biological stress for pelagic and anadromous endangered or threatened fish species in the Sacramento-San Joaquin Bay-Delta and its tributaries.

(5) If threats by nonnative species to native fish species are not addressed, there is a probability that native species of the Sacramento-San Joaquin Bay-Delta watershed's pelagic and anadromous community will go extinct.

(6) The CALFED legislation (Public Law 108-361) authorized a program to prevent, control, and eradicate invasive species, but it has not been implemented to date.

(7) A focused pilot program needs to be conducted within the Delta and river tributaries to reduce threats to native listed species by nonnative species. Reducing nonnative stressors on native listed species will contribute to both native listed species recovery and lowering the impact on downstream water users as those native listed species recover.

(b) PILOT PROJECTS TO IMPLEMENT CALFED INVASIVE SPECIES PROGRAM.

(1) Not later than January 1, 2017, the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall begin pilot projects to implement the invasive species program, including prevention, control and eradication authorized pursuant to Section 103(d)(6)(A)(iv) of Public Law 108-361. The pilot projects shall:

- (A) seek to reduce invasive aquatic vegetation, predators, and other competitors which are major factors in the decline of native listed pelagic and anadromous species that occupy the Sacramento and San Joaquin Rivers and their tributaries and the Sacramento-San Joaquin Bay-Delta; and
- (B) address how to remove, reduce, or control the effects of species including: Asiatic clams, silversides, gobies, Brazilian water weed, largemouth bass, smallmouth bass, striped bass, crappie, bluegill, white and channel catfish, and brown bullheads.

(2) The Secretary of the Interior's efforts, in consultation with the Secretary of Commerce, shall consist of the following phases:

(A) Phase 1. The Secretary of the Interior shall convene a panel of experts, including experts recommended by the State of California, to:

- (i) Identify the non-native species having the greatest impact on the viability of native pelagic and anadromous native listed species; and
- (ii) Identify the non-native species for which actions to reduce or control the population is determined to be possible; and
- (iii) Design a study to reduce the non-native species identified in clauses (i) and (ii) and prepare a cost estimate to implement this study.

(B) Phase 2. The Secretary of the Interior, in consultation with the Secretary of Commerce, shall test the general viability of nonnative reduction methods, including either direct predator removal or alteration of channel conditions, or some combination thereof, through pilot projects at multiple sites in addition to the projects on the Stanislaus River pursuant to Section 204, including known hotspots of predator aggregation or activity, such as:

- (i) Clifton Court Forebay,
- (ii) Central Valley Project intakes,
- (iii) Head of Old River,
- (iv) Georgiana Slough,
- (v) Old and Middle Rivers,

- (vi) Franks Tract,
- (vii) Paintersville Bridge,
- (viii) individual river tributaries important for wild populations of anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,
- (ix) Human-made submerged structures, and
- (x) Salvage release sites.

(C) Phase 3. If determined to be effective, the Secretary of the Interior, and the Secretary of Commerce, shall implement nonnative reduction methods at a larger number of sites, incorporating information learned during the first and second phase.

(3) The Secretary of the Interior shall collect data associated with the implementation of the projects above, and shall specifically collect data on the impact on

- (A) pelagic and anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,
- (B) water quality, and
- (C) water supply.

(4) After assessing the data described in subparagraph (2), the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall, if appropriate, annually recommend revisions to the reasonable and prudent alternatives contained in the salmonid biological opinion and the smelt biological opinion, or other administrative federal requirements governing the operation of the Central Valley Project and the State Water Project, that are likely to produce additional fishery, water quality, and water supply benefits.

(5) After the pilot projects are complete, a report describing the results of the program shall be used by the Assistant Administrator in making the survival estimates required by Section 203(f).

(c) IMPLEMENTATION. The Secretary of the Interior shall implement the CALFED program described in subpart (b) for at least a period of seven consecutive years beginning on the date of implementation.

(d) REPORTING REQUIREMENTS. The Secretary of the Interior shall provide reports to the Senate Committee on Environment and Public Works and the House Committee on Natural Resources on the following:

(1) No later than January 1, 2016, a description of the projects described in subpart (b), including the application for all necessary scientific research and species enhancement permits under section 10(a) (1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), and for the performance of the CALFED invasive species Program.

(2) Upon the completion of Phase 1 as described in subsection (b)(1)(A), a report describing its implementation and cost effectiveness.

(3) Two years after the project begins, a report describing the progress of the eradication of the nonnative species in the Sacramento-San Joaquin Bay-Delta and its tributaries and how such efforts have helped the Recovery Plans for endangered and threatened Anadromous and Pelagic Species in the Sacramento-San Joaquin Bay-Delta watershed and the associated cost effectiveness of each control measure.

(4) After the pilot projects are complete, a report describing the results of the program, including recommendations on whether the program should be continued, how the program may be taken to full scale in the most cost effective manner, and how a mitigation program for the Central Valley Project allowable under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1) could be implemented.

(e) EMERGENCY ENVIRONMENTAL REVIEWS. To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this program.

SEC. 204. ACTIONS TO BENEFIT REFUGES.

In fiscal year 2015-2016 and in any successive year when there is a declaration of drought emergency by the Governor of California, in addition to funding under section 3407 of the Central Valley Project Improvement Act (106 Stat. 4706), there is authorized to be appropriated to the Secretary \$2 million for the acceleration and completion of water infrastructure and conveyance facilities necessary to achieve full water deliveries to Central Valley wildlife refuges and habitat areas pursuant to section 3406(d) of that Act.

SEC. 205. USE OF CVPIA RESTORATION FUND.

Not less than fifty percent of the Central Valley Project Restoration Fund payments collected south-of-Delta Central Valley Project water service contractors shall be used to implement projects to benefit listed fish species that rely on the Delta ecosystem during all or part of their life stages. Projects funded pursuant to the paragraph shall be prioritized by the Secretary of the Interior in consultation with the Secretary of Commerce, the California Department of Fish and Wildlife, and the Pacific Fishery Management Council. Such funds shall be continuously appropriated.

TITLE III—PROTECTION OF THIRD-PARTY WATER RIGHTS

SEC. 301. OFFSET FOR STATE WATER PROJECT

(a) Implementation Impacts- The Secretary of the Interior shall confer with the California Department of Fish and Wildlife in connection with the implementation of this Act on potential impacts to any consistency determination for operations of the State Water Project issued pursuant to California Fish and Game Code section 2080.1.

(b) Additional Yield- If, as a result of the application of this Act, the California Department of Fish and Wildlife--

requires take authorization under section 2081 for operation of the State Water Project
and as a consequence of the Department's action, Central Valley Project yield is greater than it would have been absent the Department's actions, then that additional yield shall be made available to the State Water Project for delivery to State Water Project contractors to offset losses resulting from the Department's action.

(c) Notification Related to Environmental Protections- The Secretary of the Interior shall notify the Director of the California Department of Fish and Wildlife regarding any changes in the manner in which reasonable and prudent alternatives related to the smelt biological opinion or the salmonid biological opinion are implemented and shall confirm that the changes maintain an appropriate level of protection for the species covered by the opinions.

SEC. 302. AREA OF ORIGIN PROTECTIONS.

- (a) In General- With respect to the implementation of the provisions of this Act, the Secretary of the Interior is directed, in the operation of the Central Valley Project, to adhere to California's water rights laws, including but not limited to, California Water Code Section 85031 and the California Water Code sections referenced therein.
- (b) Contracts- With respect to individuals and entities with water rights on the Sacramento River, the mandates of this section may be met, in whole or in part, through a contract with the Secretary executed pursuant to section 14 of Public Law 76-260; 53 Stat. 1187 (43 U.S.C. 389) that is in conformance with the Sacramento River Settlement Contracts renewed by the Secretary in 2005.

SEC. 303. NO REDIRECTED ADVERSE IMPACTS.

With respect to the implementation of the provisions of this Act, the Secretary of the Interior and the Secretary of Commerce shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including such actions related to the implementation of this Act that are needed to comply with section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and other applicable Federal and State laws, shall not --

- (1) result in the involuntary reduction of water supply impacts to individuals or districts who receive water from either the State Water Project or the United States under water rights settlement contracts, exchange contracts, water service contracts, repayment contracts, refugee service or water supply contracts; or
- (2) cause redirected adverse water supply impacts to those within the Sacramento River watershed, the San Joaquin River watershed or the State Water Project service area;

Provided, however, that that nothing herein shall modify the existing terms, obligations or limitations in any water service repayment contracts, including refugee water supply contracts, Sacramento River Settlement Contracts, San Joaquin River Exchange Contracts or State Water Project contracts.

SEC. 304. ALLOCATIONS FOR SACRAMENTO VALLEY WATER

- (a) Allocations-
- (1) IN GENERAL- Subject to paragraph (2) and subsection (b), the Secretary of the Interior is directed, in the operation of the Central Valley Project, to allocate water provided for irrigation purposes to existing Central Valley Project

agricultural water service contractors within the Sacramento River Watershed in compliance with the following:

- (A) Not less than 100 percent of their contract quantities in a `Wet' year.
- (B) Not less than 100 percent of their contract quantities in an `Above Normal' year.
- (C) Not less than 100 percent of their contract quantities in a `Below Normal' year that is preceded by an `Above Normal' or a `Wet' year.
- (D) Not less than 50 percent of their contract quantities in a `Dry' year that is preceded by a `Below Normal,' an `Above Normal,' or a `Wet' year.

(2) CONDITIONS- The Secretary's actions under paragraph (a) shall be subject to--

- (A) the priority of individuals or entities with Sacramento River water rights, including those with Sacramento River Settlement Contracts, that have priority to the diversion and use of Sacramento River water over water rights held by the United States for operations of the Central Valley Project;
- (B) the United States obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors; and
- (C) the Secretary's obligation to make water available to managed wetlands pursuant to section 3406(d) of the Central Valley Project Improvement Act (Public Law 102-575).

(b) Protection of Municipal and Industrial Supplies- Nothing in subsection (a) shall be deemed to--

- (1) modify any provision of a water service contract that addresses municipal and industrial water shortage policies of the Secretary;
- (2) affect or limit the authority of the Secretary to adopt or modify municipal and industrial water shortage policies; or
- (3) affect or limit the authority of the Secretary to implement municipal and industrial water shortage policies

Neither subsection (a) nor the Secretary's implementation of subsection (a) shall constrain, govern or affect, directly or indirectly, the operations of the Central Valley Project's American River Division or any deliveries from that Division, its units or its facilities.

(c) The application of allocations made subject to subsection (a) to existing Central Valley Project agricultural contractors within the Sacramento River Watershed shall only

be applied in a manner to affect allocations to Central Valley Project municipal and industrial water service contractors within the Shasta, Trinity and Sacramento River Divisions of the Central Valley Project.

(d) No Effect on Allocations- This section shall not--

- (1) affect the allocation of water to Friant Division contractors; or
- (2) result in the involuntary reduction in contract water allocations to individuals or entities with contracts to receive water from the Friant Division.

(e) Program for Water Rescheduling- The Secretary shall direct that the United States Bureau of Reclamation develop and implement a program

to provide for the opportunity for existing
Central Valley Project agricultural water service and refuge service contractors within the
Sacramento River Watershed to reschedule water, provided for under their
Central Valley Project contracts, from one year to the next.

(f) Definitions- In this section:

- (1) The term “existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed” means water service contractors within the Shasta, Trinity, and Sacramento River Divisions of the Central Valley Project, that have a water service contract in effect, on the date of the enactment of this section, that provides water for irrigation.
- (2) The year type terms used in subsection (a) have the meaning given those year types in the Sacramento Valley Water Year Type (40-30-30) Index.

TITLE IV--MISCELLANEOUS PROVISIONS

SEC. 401. EFFECT ON EXISTING OBLIGATIONS.

- (a) IN GENERAL.—Nothing in this title preempts or modifies any existing obligation of the United States under Federal reclamation law to operate the Central Valley Project in conformity with State law, including established water rights priorities.
- (b) OBLIGATIONS UNDER CENTRAL VALLEY PROJECT IMPROVEMENT ACT.—Nothing in this Act affects or modifies any existing obligation under the Central Valley Project Improvement Act (title 34 of Public Law 102-575).

SEC. 402. LEVEL OF DETAILED REQUIRED FOR ANALYSIS.

In articulating the determinations required under this Act, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short time frame permitted for timely decision-making in response to changing conditions in the Delta.

SEC. 403. TERMINATION OF AUTHORITIES.

This Act shall expire on September 30, 2016, or the date on which the Governor of the State suspends the state of drought emergency declaration, whichever is later.

From: Tom Birmingham
Sent: Tuesday, March 31, 2015 4:55 PM
To: 'Watts, John (Feinstein)'; 'Bernhardt, David L.'
Subject: RE: Confidential current draft bill language

John,

I am traveling this evening and will not have a chance to review the language. I am confident David's review will be thorough, and I will have time to look at the bill early tomorrow afternoon.

Tom

From: Watts, John (Feinstein) [mailto:John_Watts@feinstein.senate.gov]
Sent: Tuesday, March 31, 2015 4:46 PM
To: Tom Birmingham; Bernhardt, David L.
Subject: Confidential current draft bill language

Tom and David,

If you could take a look at this this evening and let me know if anything looks awry to you, I would appreciate it.

I have included somewhat erratic redlining of changes (not all new language in redlined).

Take a look at the table of contents and review those sections that seem new or particularly important to you.

Three points to note (I am sure there are other noteworthy points, but these occur to me at the moment):

- Note the changes to subsection (b) of the Offset for the State Water Project section, which Tom Gibson requested.
- At the State's request (probably to meet their goal of reducing litigation risk), I moved language on the "Level of Detail Required for Analysis" from the end of the "Temporary Operational Flexibility" section to a new section in Title IV where it will be generally applicable to the bill.
- I included some of Stuart Somach's proposed edits to the Area of Origin and No Redirected Adverse Impacts sections, which condense these sections somewhat at the State's request (likely not enough), and I deleted the "no financial impacts" language because we are no longer authorizing new water supply projects under this bill (only operational changes), so there should be no O&M impacts on CVP contractors. We are going to have to go over these sections with a broad group of interested parties.

From: Watts, John (Feinstein)
Sent: Tuesday, March 31, 2015 4:56 PM
To: Tom Birmingham; Bernhardt, David L.
Subject: RE: Confidential current draft bill language

PS: I will put both of the options as alternative choices into the bill text on the "Temporary Operational Flexibility" section.

From: Watts, John (Feinstein)
Sent: Tuesday, March 31, 2015 7:46 PM
To: 'Tom Birmingham'; Bernhardt, David L.
Subject: Confidential current draft bill language

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From: Tom Birmingham
Sent: Wednesday, April 1, 2015 6:05 PM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: FW: Confidential current draft bill language
Attachments: SDF331Draft.docx

John,

I made two changes to the document, which are highlighted in yellow. I added the word "to" in that portion of 304 dealing with rescheduling water. In addition, I changed the sunset date to September 30, 2018. I would like to explain the reasoning for this change if you are available for a call.

Tom

From: Bernhardt, David L. [mailto:DBernhardt@BHFS.com]
Sent: Tuesday, March 31, 2015 6:55 PM
To: Watts, John (Feinstein); Tom Birmingham
Subject: RE: Confidential current draft bill language

John: My suggested edits are both redlined and highlighted in green. They are very minor. I think Tom needs to look at Section 304, I think it is likely to be acceptable to him, but I need to reserve an opportunity for him to opine on the changes in that section. That said, I do not believe he would want that review to slow-down your circulation of the draft as it stands. Also, I have included a few comments, in comment bullets, that should be easily identified and are points for you to consider. Have a good evening.

David

From: Watts, John (Feinstein) [mailto:John_Watts@feinstein.senate.gov]
Sent: Tuesday, March 31, 2015 7:46 PM
To: Tom Birmingham; Bernhardt, David L.
Subject: Confidential current draft bill language

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S. _____

California Emergency Drought Relief Act of 2015

114th CONGRESS
1st Session

IN THE SENATE OF THE UNITED STATES

April ___, 2015

AN ACT

To provide short-term water supplies to drought-stricken California.

*Be it enacted by the Senate and House of Representatives of the United States of America
in Congress assembled,*

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

- (a) Short Title- This Act may be cited as the “California Emergency Drought Relief Act of 2015”.
- (b) Table of Contents- The table of contents for this Act is as follows:
Sec. 1. Short title; table of contents.

TITLE I--CALIFORNIA EMERGENCY DROUGHT RELIEF

- Sec. 101. Definitions.
- Sec. 102. Operations under biological opinions.
- Sec. 103. Management of reverse flow under the biological opinions.
- Sec. 104. Inflow / Export ratio for voluntary transfers.
- Sec. 105. Other emergency projects.
- Sec. 106. Temporary operational flexibility during periods of high outflow.
- Sec. 107. Calendar-based triggers.
- Sec. 108. Transfer window.
- Sec. 109. Progress report.
- Sec. 110. Status of surface storage studies.

TITLE II—ACTIONS TO BENEFIT FISH AND REFUGES

- Sec. 201. Actions to benefit fish.
- Sec. 202. Pilot program to protect native anadromous fish in the Stanislaus River.
- Sec. 203. CALFED invasive species pilot projects in the Sacramento-San Joaquin Bay Delta and its tributaries.

Sec. 204. Actions to benefit refuges.
Sec. 205. Use of CVPIA Restoration Fund.

TITLE III--PROTECTION OF THIRD-PARTY WATER RIGHTS

Sec. 301. Offset for State Water Project.
Sec. 302. Area of origin protections.
Sec. 303. No redirected adverse impacts.
Sec. 304. Allocations for Sacramento Valley Water Service Contractors.

TITLE IV--MISCELLANEOUS PROVISIONS

Sec. 401. Effect on existing obligations.
Sec. 402. Level of detail required for analysis.
Sec. 403. Termination of authorities.

TITLE I--CALIFORNIA EMERGENCY DROUGHT RELIEF

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SEC. 101. DEFINITIONS.

In this title:

- (1) CENTRAL VALLEY PROJECT- The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (106 Stat. 4707).
- (2) DELTA- The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.
- (3) ~~NEGATIVE IMPACT ON THE LONG TERM SURVIVAL~~ The term “negative impact on the long-term survival” means to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.
- (45) SECRETARIES- The term “Secretaries” means--
 - (A) the Secretary of Commerce; and
 - (B) the Secretary of the Interior.
- (5) SMELT BIOLOGICAL OPINION- The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008.
- (67) STATE- The term “State” means the State of California.

(7) STATE WATER PROJECT- The term “State Water Project” means the water project described by California Water Code section 11550 et seq. and operated by the California Department of Water Resources.

SEC. 102. OPERATIONS UNDER BIOLOGICAL OPINIONS.

Operating within the existing smelt biological opinion and the salmonid biological opinion; based on information and experience gained since the adoption of those biological opinions (such as management and monitoring of turbidity to protect Delta smelt and water supplies simultaneously, and improved understanding of salmon migration behaviors); within the flexibility inherent in the Biological Opinions; consistent with applicable law (including regulations); and subject to the limitations imposed in Sections 302 and 303 of this Act; the Secretaries shall direct or allow operations of the Central Valley Project and the State Water Project to provide the maximum supply of water possible under current hydrologic conditions.

Secretaries can do so unless the project or operations constitute a highly inefficient way of providing additional water supplies; and

SEC. 103. MANAGEMENT OF REVERSE FLOW UNDER THE BIOLOGICAL OPINION

- (a) In implementing the provisions of the smelt biological opinion biological opinion, or any successor biological opinion, pertaining to management of reverse flow in the Old and Middle Rivers, the Secretary shall not restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers that is less negative than the highest negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 absent a determination that a less negative reverse flow rate is reasonably required to avoid adverse impacts beyond those considered under the smelt biological opinion.
- (b) Any determination to restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers less negative than the highest negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 shall be explained in writing, including an explanation of the data examined and the connection between those data and the choice made, and promptly posted on the Fish and Wildlife Service website.

SEC. 104. INFLOW / EXPORT RATIO FOR VOLUNTARY TRANSFERS

The Secretaries shall adopt a 1:1 inflow to export ratio for the increment of increased flow of the San Joaquin River, as measured as a 3-day running average at Vernalis during the period from April 1 through May 31, resulting from voluntary sale, transfers, or exchanges of water from agencies with rights to divert water from the San Joaquin River or its tributaries, if the following conditions are met:

(1) The Secretary of the Interior determines that the environmental effects of the proposed sale, transfer, or exchange are consistent with effects permissible under applicable law (including regulations);

(2), and provided that Delta conditions are suitable to allow movement of the acquired, transferred, or exchanged water through the Delta consistent with the Central Valley Project's and the State Water Project's permitted water rights; and

(3) such voluntary sale, transfer or exchange of water results in flow that is in addition to flow that otherwise would occur in the absence of the voluntary sale, transfer or exchange.

SEC. 105. OTHER EMERGENCY PROJECTS

(a) In General- The applicable Secretary shall--

(1) authorize and implement actions to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using the best available science and findings from the United States Geological Survey on diurnal behavior of juvenile salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits, consistent with the California Endangered Species Act and operational criteria and monitoring set forth in the California State Water Resources Control Board's Order Approving a Temporary Urgency Change in License and Permit Terms in

Commented [BHFS1]: FYI the ESA standard is the "best scientific and commercial data available," scientific data and science are different I'm not suggesting you change it, but I want you to be aware of the distinction between the two standards

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Response to Drought Conditions, effective January 31, 2014, or a successor order;

(2)(A) issue all necessary permit decisions under the authority of the Secretaries using the shortest practicable process provided under applicable law (including regulations) ~~after receiving a completed application by the State~~ to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality for Central Valley Project and State Water Project contractors and other water users, which barriers or gates should provide benefits for species protection and in-Delta water user water quality; and

(B) The barriers and gates to be considered under Subparagraph (A) shall be designed in a manner such that the effects of the project shall not trigger formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536);

(3) complete all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on water transfer requests associated with voluntarily fallowing nonpermanent crops in the State, using the shortest practicable process provided under applicable law (including regulations);

Commented [BHFS2]: Any action that "may effect" a listed species, good or bad triggers formal consultation, so this could turn out to be a high bar, particularly when "project" most likely means to place and use barriers etc

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(4) allow any North of Delta agricultural water service or refuge service contractor with unused Central Valley Project water to take delivery of such unused water through April 15, of the contract year immediately following the contract year in which such water was allocated, if-

- (A) the contractor requests the extension; and
- (B) the requesting contractor certifies that, without the extension, the contractor would have insufficient supplies to adequately meet water delivery obligations; and

(5) implement instream and offsite projects in the Delta and upstream in the Sacramento River and San Joaquin basins, in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to actions taken under this Act.

(b) Accelerated Project Decision and Elevation-

(1) IN GENERAL- Upon the request of the State, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions relating to a Federal project or operation to provide additional water supplies or address emergency drought conditions pursuant to subsection (a) and section 102, including but not limited to the placement of temporary rock barriers, water transfers

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and temporary drought relief water conveyance infrastructure.

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(2) REQUEST FOR RESOLUTION-

(A) IN GENERAL- Upon the request of the Governor~~State~~, the Secretary of Commerce~~head of an agency referred to in subsection (a)~~, or the head of another Federal agency responsible for carrying out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide emergency water supplies.

(B) MEETING- The Secretary of the Interior shall convene a meeting requested under subparagraph (A) not later than 7 days after receiving the meeting request.

(3) NOTIFICATION- Upon receipt of a request for a meeting under this subsection, the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including the project to be reviewed and the date for the meeting.

(4) DECISION- Not later than 10 days after the date on which a meeting is requested under paragraph (2), the head of the relevant Federal agency shall issue a final decision on the project in writing.

(5) MEETING CONVENED BY SECRETARY- The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

SEC. 106. TEMPORARY OPERATIONAL FLEXIBILITY DURING PERIODS OF HIGH OUTFLOW.

(a) In General- Consistent with avoiding additional adverse effects upon listed fish species beyond the range of those authorized under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and other environmental protections under subsection (d), the Secretaries shall use the emergency consultation provisions of the Endangered Species Act and its implementing regulations to implement temporary changes in the operating criteria for the biological opinions during days of high outflow as defined in subsection (b) that would improve water supplies for the Central Valley Project and the State Water Project.

(b) Days of high outflow. - Subsection (a) shall be authorized on any day or days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey.

(c) Compliance With ESA Authorizations.- In carrying out this section, the Secretaries may continue to impose any requirements under the smelt and salmonid biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to

avoid additional adverse effects on a listed fish species beyond the range of those authorized under the Endangered Species Act of 1973.

(d) Other Environmental Protections.-

(1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law, including State Water Resources Control Board Decision 1641, as it may be implemented in any given year.

(2) During the first flush of sediment out of the Delta in each water year, and provided that such determination is based upon objective evidence, OMR flow may be managed at rates less negative than -5000 cubic feet per second for a minimum duration to avoid movement of adult Delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants.

(3) This section shall not affect the application of the salmonid biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those authorized under the Endangered Species Act of 1973. In addition to any other actions to benefit water supply, the Secretary and the

Secretary of Commerce shall consider allowing through-Delta water transfers to occur during this period.

(4) During operations under this section, the Secretary of the Interior, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to ensure incidental take levels are not exceeded, and to identify potential negative impacts and actions, if any, necessary to avoid impacts of the temporary operational flexibility to species listed under the Endangered Species Act of 1973.

(5) During operations under this section, the Secretaries shall confer with the Director of the California Department of Fish and Wildlife regarding the potential impacts to species listed under the California Endangered Species Act that are not listed under the Endangered Species Act 1973.

(e) Emergency Consultation.-

(1) The Secretary of the Interior shall use the emergency consultation procedures under the Endangered Species Act of 1973 and its implementing regulation at section 402.05, title 50, Code of Federal Regulations, to temporarily adjust the operating criteria under the biological opinions,

(A) no more than necessary to achieve the purposes of this section consistent with the

environmental protections in subsections (c) and (d); and

(B) including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day and 14-day running averages of tidally filtered daily Old and Middle River flow requirements under the biological opinions.

(2) At the conclusion of informal consultation, the Secretary of the Interior shall not reinitiate consultation on these adjusted operations if the effects on listed fish species of these operations under this section remain within the range of those authorized under the Endangered Species Act.

SEC. 107. CALENDAR-BASED TRIGGERS.

Notwithstanding any calendar based trigger described in the salmonid biological opinion Reasonable and Prudent Alternative, operations of the Central Valley Project and the State Water Project shall not be limited by the Reasonable and Prudent Alternative unless current monitoring data indicate that the actions described in the Reasonable and Prudent Alternative are reasonably required to avoid the impacts identified by the salmonid biological opinion.

SEC. 108. TRANSFER WINDOW.

Subject to the limitations on maximum transfer amounts, the period for exports for transfers shall include October 1 through November 15, if the following conditions are met:

- (a) the Secretary of the Interior determines that the environmental effects of the export of transfers are consistent with effects permissible under applicable law (including regulations); and,
- (b) Delta conditions are suitable to allow the export for transfers consistent with conditions imposed by Central Valley Project and the State Water Project water right permits or licenses.

SEC. 109. PROGRESS REPORT.

Ninety days after the date of the enactment of this Act and every 90 days thereafter, the Secretaries shall provide a progress report describing the implementation of sections 102 and 103 to the Committee on Natural Resources in the House of Representatives and the Committee on Energy and Natural Resources in the Senate.

SEC. 110. STATUS OF SURFACE STORAGE STUDIES.

One year after the date of the enactment of this Act, the Secretary of the Interior shall provide a progress report on the status of feasibility studies undertaken pursuant to clauses (i) and (ii) of section 103(d)(1)(A) of the Water Supply, Reliability, and Environmental Improvement Act (Public Law 108-361) to the Committee on Natural Resources in the House of Representatives and the

Committee on Energy and Natural Resources in the Senate. The report shall include timelines for study completion, draft environmental impact statements, final environmental impact statements, and Records of Decision.

TITLE II—ACTIONS TO BENEFIT FISH AND REFUGES

SEC. 201. ACTIONS TO BENEFIT FISH.

[This section would include the proposals to benefit endangered smelt and salmon, such as:

- Finding ways to keep the salmon from going through the Delta Cross Channel Gates;
- Reducing the propensity of predators to congregate in certain areas to prey on endangered fish;
- Identifying alternative ways to release hatchery salmon so they have higher survival rates;
- Reducing lighting intensity of structures near / around the river so predators cannot see endangered fish prey as easily;
- Trap and barge juvenile salmon to help them avoid predators and other hazards in the Delta as they migrate to the ocean.]

SEC. 202. PILOT PROGRAM TO PROTECT NATIVE ANADRAMOUS FISH IN THE STANISLAUS RIVER.

(a) Establishment of Non-native Predator Fish Removal Program- The Assistant Administrator and districts, in consultation with the United States Fish and Wildlife Service and the California Department of Fish and Wildlife, shall jointly develop and conduct a pilot non-native predator fish removal program to remove non-native striped bass, smallmouth bass, largemouth bass, black bass, and other non-native predator fishes from the Stanislaus River. The pilot program shall--

- (1) be scientifically based;
- (2) include methods to quantify the number and size of predator fishes removed each year, the impact of such removal on the overall abundance of predator fishes, and the impact of such removal on the populations of juvenile anadromous fish found in the Stanislaus River by, among other things, evaluating the number of juvenile anadromous fish that migrate past the rotary screw trap located at Caswell;
- (3) among other methods, use wire fyke trapping, portable resistance board weirs, and boat electrofishing, which are among the most effective predator collection techniques that minimize effects to native anadromous fish;
- (4) be developed, including the application for all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), for the performance of the pilot program, not later than 6 months after the date of the enactment of this Act;
- (5) be implemented as quickly as possible following the issuance of all necessary scientific research and species enhancement permits needed to begin the pilot program; and
- (6) be implemented for a period of seven consecutive calendar years.

(b) Management- The management of the pilot program shall be the joint responsibility of the Assistant Administrator and the districts. Such parties shall work collaboratively to ensure the

performance of the pilot program, and shall discuss and agree upon, among other things, changes in the structure, management, personnel, techniques, strategy, data collection, reporting and conduct of the pilot program.

(c) Conduct-

(1) IN GENERAL- By agreement between the Assistant Administrator and the participating districts, the pilot program may be conducted by their own personnel, qualified private contractors hired by the districts, personnel of, on loan to, or otherwise assigned to NOAA Fisheries, or a combination thereof.

(2) PARTICIPATION BY NOAA FISHERIES- In the event the districts elect to conduct the program using their own personnel or qualified private contractors hired by them, the Assistant Administrator has the option to assign an employee of, on loan to, or otherwise assigned to NOAA Fisheries, to be present for all activities performed in the field. Such presence shall ensure compliance with the agreed upon elements specified in subsection (b). The districts shall pay 100 percent of the cost of such participation as specified in subsection (d).

(3) TIMING OF ELECTION- The districts shall notify the Assistant Administrator of their election on or before October 15 of each calendar year of the pilot program, which election shall apply to the work performed in the subsequent calendar year.

(d) Funding-

(1) CONTRIBUTED FUNDS- The Assistant Administrator is authorized to receive and expend contributed funds for the purposes for which the funds contributed in a like manner as if said sums had been specifically appropriated for said purposes.

(2) ANNUAL FUNDING- The districts shall be responsible through contributed funds for 100 percent of the cost of the pilot program. On or before December 1 of each year of the pilot program, the Assistant Administrator shall submit to the districts an estimate of the cost to be incurred by the NOAA Fisheries in the following calendar year, if any, including the cost of any data collection and posting under subsection (e). If an amount equal to the estimate is not provided through contributed funds, or any other fund as directed by the Assistant Administrator, by the districts on or before December 31 of each year, (a) the NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled, and (b) the districts shall be prohibited from conducting any aspect of the pilot program, until full payment is made by the districts.

(3) ACCOUNTING- On or before September 1 of each calendar year, the Assistant Administrator shall provide an accounting of the prior calendar year's expenses to the districts. If the estimate paid by the districts was less than the actual costs incurred by the NOAA Fisheries, the districts shall have until September 30 of that calendar year to pay the difference to the fund indentified by the Assistant Administrator in subsection (d)(1), or NOAA Fisheries shall have no obligation to conduct the pilot

program activities otherwise scheduled. If the estimate paid by the districts was greater than the actual costs incurred by the NOAA Fisheries, then a credit shall be provided to the districts, which shall be deducted from the estimate payment the districts must make for the work performed by the NOAA Fisheries, if any, in the next calendar year.

Administrator, by the districts on or before December 31 of each year, (a) the NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled, and (b) the districts shall be prohibited from conducting any aspect of the pilot program, until full payment is made by the districts.

(e) Reporting and Evaluation-

(1) IN GENERAL- On or before the 15th day of each month, the Assistant Administrator shall post on the website of the NOAA Fisheries a tabular summary of the raw data collected in the prior month.

(2) REPORT- On or before June 30 of the calendar year following the completion of the program, the Assistant Administrator and districts shall jointly submit a report for peer review that--

(A) discusses the findings and conclusions of the pilot program;

(B) synthesizes the data collected under paragraph (1); and

(C) makes recommendations for further study and action.

(f) Permits Process-

(1) Not later than 180 days after filing of an application, the Assistant Administrator and the districts, the Secretary of the Interior, the Secretary of Commerce, or both, as appropriate, shall issue all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act (16 U.S.C. 153(9)(a)(1)), for the performance of the pilot program.

(2) All permits issued shall be in the name of the NOAA Fisheries and the districts.

(3) Districts may delegate the authority to administer the permit authority to any qualified private contractor retained in accordance with subsection (c).

(4) The pilot program, including amendments thereto by the appropriate Federal and State agencies, shall be designed to meet the requirements of a conservation plan that complies with the requirements of Section 10(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(2)).

(h) Emergency Environmental Reviews – To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with Section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this section.

(i) Definitions- For the purposes of this section:

- (1) ASSISTANT ADMINISTRATOR- The term 'Assistant Administrator' means the Assistant Administrator of National Oceanic and Atmospheric Administration, NOAA Fisheries
- (2) DISTRICTS- The term 'districts' means the Oakdale Irrigation District and the South San Joaquin Irrigation District.
- (3) PILOT PROGRAM- The term 'program' means the pilot non-native predator removal program established under this section.
- (j) Sunset- The authorities provided under this section shall expire seven years after the implementation of the pilot program.

SEC. 203. CALFED INVASIVE SPECIES PILOT PROJECTS IN THE SACRAMENTO-SAN JOAQUIN BAY DELTA AND ITS TRIBUTARIES.

- (a) FINDINGS.—Congress finds that—
- (1) The Sacramento-San Joaquin Bay Delta and its Tributaries-
- (A) is one of the largest and most diverse estuaries in the United States,
- (B) is a natural treasure and a vital link in California's water system, and
- (C) has native biodiversity important to the ecological and economic systems of California, including water deliveries to agriculture, municipalities and to the environment and fisheries industries, and

(D) has river tributaries important for rearing of salmon and steelhead smolts which experience a high level of predation from non-native species.

(2) Past, present and future introductions of invasive species are and will be a major factor in the decline of native pelagic and anadromous endangered or threatened species in the Sacramento–San Joaquin Bay Delta and its tributaries.

(3) More than 250 nonnative aquatic and plant species have been introduced into the Delta and its tributaries; of these, at least 185 species have become established and have altered the Sacramento-San Joaquin Bay Delta watershed's ecosystem.

(4) The Bay Delta Conservation Plan, the Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-run Chinook Salmon and Central Valley Spring-run Chinook Salmon and the Distinct Population Segment of the Central Valley Steelhead, the Recovery Plan for the Sacramento-San Joaquin Delta Native Fishes, and the multiple 5 year reviews of those plans all highlight that introduced nonnative invasive species are a significant factor in the decline of native fish species. These nonnative species, which include invasive aquatic vegetation, predators, and competitors, directly or indirectly cause biological stress for pelagic and anadromous endangered or threatened fish species in the Sacramento-San Joaquin Bay-Delta and its tributaries.

(5) If threats by nonnative species to native fish species are not addressed, there is a probability that native species of the

Sacramento-San Joaquin Bay-Delta watershed's pelagic and anadromous community will go extinct.

(6) The CALFED legislation (Public Law 108-361) authorized a program to prevent, control, and eradicate invasive species, but it has not been implemented to date.

(7) A focused pilot program needs to be conducted within the Delta and river tributaries to reduce threats to native listed species by nonnative species. Reducing nonnative stressors on native listed species will contribute to both native listed species recovery and lowering the impact on downstream water users as those native listed species recover.

(b) PILOT PROJECTS TO IMPLEMENT CALFED INVASIVE SPECIES PROGRAM.

(1) Not later than January 1, 2017, the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall begin pilot projects to implement the invasive species program, including prevention, control and eradication authorized pursuant to Section 103(d)(6)(A)(iv) of Public Law 108-361. The pilot projects shall:

(A) seek to reduce invasive aquatic vegetation, predators, and other competitors which are major factors in the decline of native listed pelagic and anadromous species that occupy the Sacramento and San Joaquin Rivers and their tributaries and the Sacramento-San Joaquin Bay-Delta; and

(B) address how to remove, reduce, or control the effects of species including: Asiatic clams, silversides, gobies, Brazilian water weed, largemouth bass, smallmouth bass, striped bass, crappie, bluegill, white and channel catfish, and brown bullheads.

(2) The Secretary of the Interior's efforts, in consultation with the Secretary of Commerce, shall consist of the following phases:

(A) Phase 1. The Secretary of the Interior shall convene a panel of experts, including experts recommended by the State of California, to:

- (i) Identify the non-native species having the greatest impact on the viability of native pelagic and anadromous native listed species; and
- (ii) Identify the non-native species for which actions to reduce or control the population is determined to be possible; and
- (iii) Design a study to reduce the non-native species identified in clauses (i) and (ii) and prepare a cost estimate to implement this study.

(B) Phase 2. The Secretary of the Interior, in consultation with the Secretary of Commerce, shall test the general viability of nonnative reduction methods, including either direct predator removal or alteration of channel conditions, or some combination thereof, through pilot projects at multiple sites in addition to the projects on the Stanislaus River pursuant to Section 204, including known hotspots of predator aggregation or activity, such as:

- (i) Clifton Court Forebay,
- (ii) Central Valley Project intakes,
- (iii) Head of Old River,
- (iv) Georgiana Slough,
- (v) Old and Middle Rivers,
- (vi) Franks Tract,
- (vii) Paintersville Bridge,
- (viii) individual river tributaries important for wild populations of anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,
- (ix) Human-made submerged structures, and
- (x) Salvage release sites.

(C) Phase 3. If determined to be effective, the Secretary of the Interior, and the Secretary of Commerce, shall implement nonnative reduction methods at a larger number of sites, incorporating information learned during the first and second phase.

(3) The Secretary of the Interior shall collect data associated with the implementation of the projects above, and shall specifically collect data on the impact on

- (A) pelagic and anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,
- (B) water quality, and

(C) water supply.

(4) After assessing the data described in subparagraph (2), the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall, if appropriate, annually recommend revisions to the reasonable and prudent alternatives contained in the salmonid biological opinion and the smelt biological opinion, or other administrative federal requirements governing the operation of the Central Valley Project and the State Water Project, that are likely to produce additional fishery, water quality, and water supply benefits.

(5) After the pilot projects are complete, a report describing the results of the program shall be used by the Assistant Administrator in making the survival estimates required by Section 203(f).

(c) **IMPLEMENTATION.** The Secretary of the Interior shall implement the CALFED program described in subpart (b) for at least a period of seven consecutive years beginning on the date of implementation.

(d) **REPORTING REQUIREMENTS.** The Secretary of the Interior shall provide reports to the Senate Committee on Environment and Public Works and the House Committee on Natural Resources on the following:

(1) No later than January 1, 2016, a description of the projects described in subpart (b), including the application for all necessary scientific research and species enhancement permits under section 10(a) (1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), and for the performance of the CALFED invasive species Program.

(2) Upon the completion of Phase 1 as described in subsection (b)(1)(A), a report describing its implementation and cost effectiveness.

(3) Two years after the project begins, a report describing the progress of the eradication of the nonnative species in the Sacramento-San Joaquin Bay-Delta and its tributaries and how such efforts have helped the Recovery Plans for endangered and threatened Anadromous and Pelagic Species in the Sacramento-San Joaquin Bay-Delta watershed and the associated cost effectiveness of each control measure.

(4) After the pilot projects are complete, a report describing the results of the program, including recommendations on whether the program should be continued, how the program may be taken to full scale in the most cost effective manner, and how a mitigation program for the Central Valley Project allowable under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1) could be implemented.

(e) EMERGENCY ENVIRONMENTAL REVIEWS. To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this program.

SEC. 204. ACTIONS TO BENEFIT REFUGES.

In fiscal year 2015-2016 and in any successive year when there is a declaration of drought emergency by the Governor of California, in addition to funding under section 3407 of the Central Valley Project Improvement Act (106 Stat. 4706), there is authorized to be appropriated to the Secretary \$2 million for the acceleration and completion of water infrastructure and conveyance facilities necessary to achieve full water deliveries to Central Valley wildlife refuges and habitat areas pursuant to section 3406(d) of that Act.

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SEC. 205. USE OF CVPIA RESTORATION FUND.

Not less than fifty percent of the Central Valley Project Restoration Fund payments collected south-of-Delta Central Valley Project water service contractors shall be used to implement projects to benefit listed fish species that rely on the Delta ecosystem during all or part of their life stages. Projects funded pursuant to the paragraph shall be prioritized by the Secretary of the Interior in consultation with the Secretary of Commerce, the California Department of Fish and Wildlife, and the Pacific Fishery Management Council. Such funds shall be continuously appropriated.

TITLE III—PROTECTION OF THIRD-PARTY WATER RIGHTS

SEC. 301. OFFSET FOR STATE WATER PROJECT

(a) Implementation Impacts- The Secretary of the Interior shall confer with the California Department of Fish and Wildlife in connection with the implementation of this Act on potential impacts to any consistency determination for operations of the State Water Project issued pursuant to California Fish and Game Code section 2080.1.

(b) Additional Yield- If, as a result of the application of this Act, the California Department of Fish and Wildlife--
~~(1) revokes the consistency determinations pursuant to California Fish and Game Code section 2080.1 that are applicable to the State Water Project;~~

and as a consequence of the Department's action, Central Valley Project yield is greater than it would have been absent the Department's actions, then that additional yield shall be made available to the State Water Project for delivery to State Water Project contractors to offset losses resulting from the Department's action.

(c) Notification Related to Environmental Protections- The Secretary of the Interior shall notify the Director of the California Department of Fish and Wildlife regarding any changes in the manner in which reasonable and prudent alternatives related to the smelt biological opinion or the salmonid biological opinion are implemented and shall

confirm that the changes maintain an appropriate level of protection for the species covered by the opinions.

SEC. 302. AREA OF ORIGIN PROTECTIONS.

- (a) In General- With respect to the implementation of the provisions of this Act, the Secretary of the Interior is directed, in the operation of the Central Valley Project, to adhere to California's water rights laws, including but not limited to, California Water Code Section 85031 and the California Water Code sections referenced therein.
- (b) Contracts- With respect to individuals and entities with water rights on the Sacramento River, the mandates of this section may be met, in whole or in part, through a contract with the Secretary executed pursuant to section 14 of Public Law 76-260; 53 Stat. 1187 (43 U.S.C. 389) that is in conformance with the Sacramento River Settlement Contracts renewed by the Secretary in 2005.

SEC. 303. NO REDIRECTED ADVERSE IMPACTS.

(a) In General—With respect to the implementation of the provisions of this Act, the Secretary of the Interior and the Secretary of Commerce shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including such actions related to the implementation of this Act that are needed to comply with under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and other applicable Federal and State laws, shall not directly or indirectly--

- (1) result in the involuntary reduction of water supply ~~or fiscal~~ impacts to individuals or districts who receive water from either the State Water Project or the United States under water rights settlement contracts, exchange contracts, water service contracts, repayment contracts, refuge service or water supply contracts; or
- (2) cause redirected adverse water supply ~~or fiscal~~ impacts to those within the Sacramento River watershed, the San Joaquin River watershed or the State Water Project service area;

Provided, however, that that nothing herein shall modify the existing terms, obligations or limitations in any water service repayment contracts, including refuge water supply contracts, Sacramento River Settlement Contracts, San Joaquin River Exchange Contracts or State Water Project contracts.

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~~(b) Costs To the extent that costs are incurred solely pursuant to or as a result of this Act and would not otherwise have been incurred by any entity or public or local agency or subdivision of the State of California, such costs shall not be borne by any such entity, agency, or subdivision of the State of California, unless such costs are incurred on a voluntary basis.~~

~~(a) Allocations-~~

- ~~(1) IN GENERAL- Subject to paragraph (2) and subsection (b), the Secretary of the Interior is directed, in the operation of the Central Valley Project, to allocate water provided for irrigation purposes to~~

existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed in compliance with the following:

- (A) Not less than 100 percent of their contract quantities in a `Wet' year.
- (B) Not less than 100 percent of their contract quantities in an `Above Normal' year.
- (C) Not less than 100 percent of their contract quantities in a `Below Normal' year that is preceded by an `Above Normal' or a `Wet' year.
- (D) Not less than 50 percent of their contract quantities in a `Dry' year that is preceded by a `Below Normal,' an `Above Normal,' or a `Wet' year.

~~THE SECRETARY IS NOT REQUIRED TO DIVERT AND USE WATER~~
(2) CONDITIONS- The Secretary's actions under paragraph (a) shall be subject to--

- (A) the priority of individuals or entities with Sacramento River water rights, including those with Sacramento River Settlement Contracts, that have priority to the diversion and use of Sacramento River water over water rights held by the United States for operations of the Central Valley Project;
- (B) the United States obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors; and
- (C) the Secretary's obligation to make water available to managed wetlands pursuant to section 3406(d) of the Central Valley Project Improvement Act (Public Law 102-575).

(b) Protection of Municipal and Industrial Supplies-

Nothing in subsection (a) shall be deemed to--

- (1) modify any provision of a water service contract that addresses municipal and industrial water shortage policies of the Secretary;
- (2) affect or limit the authority of the Secretary to adopt or modify municipal and industrial water shortage policies; or
- (3) affect or limit the authority of the Secretary to implement municipal and industrial water shortage policies; ~~or~~

Neither subsection (a) nor the Secretary's implementation of subsection (a) shall constrain, govern or affect, directly or indirectly, the operations of the Central Valley Project's American River Division or any deliveries from that Division, its units or its facilities.

(c) The application of allocations made subject to subsection (a) to existing Central Valley Project agricultural contractors within the Sacramento River Watershed shall only be applied in a manner to affect allocations to Central Valley Project municipal and industrial water service contractors within the Shasta, Trinity and Sacramento River Divisions of the Central Valley Project.

~~(de)~~ No Effect on Allocations- This section shall not--

- (1) affect the allocation of water to Friant Division contractors; or

(2) result in the involuntary reduction in contract water allocations to individuals or entities with contracts to receive water from the Friant Division.

(ed) Program for Water Rescheduling- The Secretary ~~of the Interior~~ shall direct that the United States Bureau of Reclamation to develop and implement a program, ~~not later than 1 year after the date of the enactment of this Act,~~ to provide for the opportunity for existing Central Valley Project agricultural water service and refuge service contractors within the Sacramento River Watershed to reschedule water, provided for under their ~~water service~~ Central Valley Project contracts, from one year to the next.

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(fe) Definitions- In this section:

(1) The term “existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed” means water service contractors within the Shasta, Trinity, and Sacramento River Divisions of the Central Valley Project, that have a water service contract in effect, on the date of the enactment of this section, that provides water for irrigation.

(2) The year type terms used in subsection (a) have the meaning given those year types in the Sacramento Valley Water Year Type (40-30-30) Index.

TITLE IV--MISCELLANEOUS PROVISIONS

SEC. 401. EFFECT ON EXISTING OBLIGATIONS.

- (a) IN GENERAL.—Nothing in this title preempts or modifies any existing obligation of the United States under Federal reclamation law to operate the Central Valley Project in conformity with State law, including established water rights priorities.
- (b) OBLIGATIONS UNDER CENTRAL VALLEY PROJECT IMPROVEMENT ACT.—Nothing in this Act ~~other than subsection 204(f)~~ affects or modifies any existing obligation under the Central Valley Project Improvement Act (title 34 of Public Law 102-575).

SEC. 402. LEVEL OF DETAILED REQUIRED FOR ANALYSIS.

In articulating the determinations required under this Act, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short time frame permitted for timely decision-making in response to changing conditions in the Delta.

This Act shall expire on September 30, 2018, or the date on which the Governor of the State suspends the state of drought emergency declaration, whichever is later.

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From: Jason Peltier

Sent: Saturday, April 11, 2015 8:43 PM

To: Tom Birmingham; Dan Nelson <Dan.Nelson@sldmwa.org>

CC: Craig Manson; Philip Williams; Sue Ramos; James Watson; Ara Azhderian; Jon Rubin; Gayle Holman; Ed Manning; Carolyn Jensen; Michael Burns; Dennis Cardoza; Joe Findaro; David Bernhardt

Subject: Mobile Web - News - Delta tunnels: Major changes to environmental restoration could endanger Brown's water plan

<http://www.santacruzsentinel.com//environment-and-nature/20150411/delta-tunnels-major-changes-to-environmental-restoration-could-endanger-browns-water-plan>

From: Tom Birmingham
Sent: Wednesday, April 15, 2015 11:57 AM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: RE: Transfer Provision
Attachments: Transfer Window.docx

John,

Pursuant to our discussion I modified the transfer provision, which is attached. I hope the change will eliminate Friant's concern.

Tom

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Tuesday, March 31, 2015 3:42 PM
To: 'Watts, John (Feinstein)'
Cc: 'Bernhardt, David L.'
Subject: Transfer Provision

John,

Pursuant to your request, I drafted the attached provision expanding the transfer window. You will note that I modeled this requirements for this section on the requirements for the 1:1 April – May I/E ratio provision.

Tom

SEC. _____. TRANSFER WINDOW

Subject to the limitations on maximum transfer amounts, the period for exports for transfers shall include October 1 through November 15, if the following conditions are met:

- (A) the Secretary of the Interior determines that the environmental effects of the export of transfers are consistent with effects permissible under applicable law (including regulations); and,
- (B) Delta conditions are suitable to allow the export for transfers consistent with conditions imposed by Central Valley Project and the State Water Project water right permits or licenses; and,
- (C) the transfer can be accomplished through the use of excess capacity of Central Valley Project or State Water Project facilities and will not diminish the projects' ability to meet their respective contract obligations.

From: Tom Birmingham
Sent: Wednesday, April 15, 2015 12:02 PM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: Reclamation's Response to Friant
Attachments: 1229_001.pdf

John,

Attached is a letter sent from Reclamation to Friant that addresses the issues raised by Jennifer Buckman.

Tom



United States Department of the Interior

IN REPLY
REFER TO:

BUREAU OF RECLAMATION
Central Valley Operations Office
3310 El Camino Avenue, Suite 300
Sacramento, California 95821

MAR 06 2015

CVO-100
WTR-4.03

Mr. Ronald Jacobsma
General Manager
Friant Water Authority
1107 9th Street, Ste., 640
Sacramento, CA 95814

Subject: 2014/2015 CVP Operations Accounting – Exchange Contract Substitute Water Supply

Dear Mr. Jacobsma:

We acknowledge receipt of your March 2, 2015, letter and concur that Central Valley Project (CVP) operations in 2014, and now 2015, have been challenging given the critically dry conditions. Real-time Project operations and working with the resource agencies to balance both water supply and species needs have taken priority at times this fall and winter, but we believe we have been responsive to your requests. Other interested parties have stated that their various water accounting questions related to the Coordinated Operations Agreement (COA), north-to-south transfers and Delta pumping have generally been addressed, and these parties continue to work with us to refine and adjust this bookkeeping as we progress through the season.

The tracking of reservoir operations and Delta pumping under the COA is a continuous daily process with periodic seasonal adjustments to represent conditions outside base Project operations, such as the development and conveyance of transfer water. Our work with the California Department of Water Resources (DWR) to quantify these COA adjustments for 2014 has been complicated by the unusually dry conditions, but we have reached general agreement with DWR that the COA was near balanced in January 2015. A final round of minor adjustments is still under review between the operations staffs, but any outstanding refinements are small relative to the overall operations of the two projects, and any final modifications should not significantly influence the allocation of water to CVP contractors this coming year.

As we have discussed in the past, it is critically important that transfers do not adversely affect Project operations. We believe that the information we have provided to your staff illustrates

that we have taken great efforts to schedule the conveyance of transfer water in a manner that both benefited the Project as well as provided instream benefits to salmon species this last fall. Specifically the shift of transfer pumping from the period when the transfer water was made available in the Sacramento and American Rivers to the fall months, when Exchange Contractor demands had diminished, highlights our efforts to address the concerns you raised last summer.

In your letter you have expressed a concern related to the quantity of CVP water conveyed in the months of October and November 2014. In these months, upstream reservoir releases were not at minimum values as you stated. In fact these releases were augmented with the transfer supplies. This was true on both the Sacramento and American Rivers. Given the extremely dry conditions that existed in the Sacramento Valley this last fall, it is our estimate that base CVP pumping in the Delta would have been zero without the added release of water associated with these transfers.

Regarding water stored in San Luis Reservoir, you were recently provided a detailed summary of our estimate of all the Project & Non-Project water in storage in the Federal share of San Luis Reservoir. This information was provided to you via e-mail on March 3 from the South Central California Area Office. This summary is our best estimate of the breakdown of supplies as of late February and will be updated later in March based on end-of-February data collected from various meter readings.

This last year presented many difficult operational challenges. We believe we have been forthright with you and your staff regarding overall CVP operations, the conveyance to transfer water and the quantification of supplies in San Luis Reservoir. We have also reached out to your member districts to explore options to help augment supplies within the Friant Division.

We look forward to working with you on the challenges ahead in 2015. If you have any questions or concerns as we move through the water year, feel free to call me directly at (916) 979-2199.

Sincerely,



Ronald Milligan
Operations Manager

From: Watts, John (Feinstein)
Sent: Wednesday, April 15, 2015 12:40 PM
To: Tom Birmingham
CC: 'Bernhardt, David L.'
Subject: RE: Transfer Provision

Tom,

Do you want to send this to Jenny, or do you want me to send it? Either is fine with me. If you send it, I would revise the frame of the language to indicate that it is now paragraph (a)(4) in section 105 rather than a separate section.

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Wednesday, April 15, 2015 2:57 PM
To: Watts, John (Feinstein)
Cc: 'Bernhardt, David L.'
Subject: RE: Transfer Provision

John,

Pursuant to our discussion I modified the transfer provision, which is attached. I hope the change will eliminate Friant's concern.

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Sent: Tuesday, March 31, 2015 3:42 PM
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Cc: 'Bernhardt, David L.'
Subject: Transfer Provision

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Tom

From: Tom Birmingham
Sent: Wednesday, April 15, 2015 12:46 PM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: RE: Transfer Provision

I suggest you send the language. I am so frustrated with these people I am not sure I could remain civil.

From: Watts, John (Feinstein) [mailto:John_Watts@feinstein.senate.gov]
Sent: Wednesday, April 15, 2015 12:40 PM
To: Tom Birmingham
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From: Watts, John (Feinstein)
Sent: Wednesday, April 15, 2015 12:52 PM
To: Tom Birmingham
CC: 'Bernhardt, David L.'
Subject: RE: Transfer Provision

I just did so.

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Sent: Wednesday, April 15, 2015 3:46 PM
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Cc: 'Bernhardt, David L.'
Subject: RE: Transfer Provision

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Tom

From: James Watson
Sent: Friday, April 17, 2015 1:00 PM
To: 'Daniel Nelson'; bgoldie@valleywater.org; JFiedler@valleywater.org; 'Jill Duerig'; TBirmingham@Westlandswater.org; 'Peltier Jason'; 'Susan Ramos'; jbeck@kcwa.com; 'Brent Walthall'; jknightlinger@mwdbh2o.com; RPatterson@mwdbh2o.com; 'Burman,Brenda W'; 'David L. Bernhardt'; ElaineC@paramountfarming.com; melissap@paramountfarming.com
CC: kclark@westlandswater.org; 'Glisson,Brenda S'; VBarrio@mwdbh2o.com; tblakslee@kcwa.com; 'Susan Mussett'; 'Phillimore, Bill'
Subject: Canceled: BDCP Legislation

Importance: High

Return-Path: <jwatson@westlandswater.org>
X-Envelope-To: dan.nelson@sldmwa.org, bgoldie@valleywater.org, JFiedler@valleywater.org, jduerig@zone7water.com, TBirmingham@Westlandswater.org, jpeltier@westlandswater.org, sramos@westlandswater.org, jbeck@kcwa.com, bwalthall@kcwa.com, jknightlinger@mwdbh2o.com, RPatterson@mwdbh2o.com, BBurman@mwdbh2o.com, DBernhardt@BHFS.com, ElaineC@paramountfarming.com, melissap@paramountfarming.com, kclark@westlandswater.org, bglisson@mwdbh2o.com, VBarrio@mwdbh2o.com, tblakslee@kcwa.com, susan mussett@sldmwa.org, BillP@paramountfarming.com

Date: Fri, 17 Apr 2015 13:00:03 -0700

X-Footer: d2VzdGxhbmRzd2F0ZXIub3Jn

Received: from localhost ([127.0.0.1])

by kms.westlandswater.org (Kerio Connect 8.2.4);

Fri, 17 Apr 2015 13:00:03 -0700

Subject: Canceled: BDCP Legislation

Importance: High

X-Priority: 1

Message-ID: <████████████████-b2da-████████████████@westlandswater.org>

From: James Watson <jwatson@westlandswater.org>

To: 'Daniel Nelson' <dan.nelson@sldmwa.org>, bgoldie@valleywater.org, JFiedler@valleywater.org, 'Jill Duerig' <jduerig@zone7water.com>, TBirmingham@Westlandswater.org, 'Peltier Jason' <jpeltier@westlandswater.org>, 'Susan Ramos' <sramos@westlandswater.org>, jbeck@kcwa.com, 'Brent Walthall' <bwalthall@kcwa.com>, jknightlinger@mwdbh2o.com, RPatterson@mwdbh2o.com, "Burman,Brenda W" <BBurman@mwdbh2o.com>, "David L. Bernhardt" <DBernhardt@BHFS.com>, ElaineC@paramountfarming.com, melissap@paramountfarming.com

Cc: kclark@westlandswater.org, "Glisson,Brenda S" <bglisson@mwdbh2o.com>, VBarrio@mwdbh2o.com, tblakslee@kcwa.com, 'Susan Mussett'

<susan mussett@sldmwa.org>, "Phillimore, Bill"

<BillP@paramountfarming.com>

MIME-Version: 1.0

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X-MailStore-Folder-UTF7: kclark/kclark+AEA-westlandswater.org/Inbox/Susan Email

X-MailStore-Message-ID: <████████████████-b2da-████████████████@westlandswater.org>

X-MailStore-Header-Hash: ██████████

X-MailStore-Date: 20150417200003

X-MailStore-Flags: 2

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Content-Type: text/plain; charset="utf-8"

Content-Transfer-Encoding: quoted-printable

User James Watson (jwatson@westlandswater.org) has canceled the meeting.
Subject: BDCP Legislation

Location: Call: 800-████████ pass code ██████████

When: 2015-03-16, 09:00 - 10:00 GMT -7:00 (60 minutes)

Organizer: James Watson (jwatson@westlandswater.org)

Required Attendees: Daniel Nelson (dan.nelson@sldmwa.org), bgoldie@valleywater.org (bgoldie@valleywater.org), JFiedler@valleywater.org (JFiedler@valleywater.org), Jill Duerig (jduerig@zone7water.com), TBirmingham@Westlandswater.org (TBirmingham@Westlandswater.org), Peltier Jason (jpeltier@westlandswater.org), Susan Ramos (sramos@westlandswater.org), jbeck@kcwa.com (jbeck@kcwa.com), Brent Walthall (bwalthall@kcwa.com), jkightlinger@mwdh2o.com (jkglightlinger@mwdh2o.com), RPatterson@mwdh2o.com (RPatterson@mwdh2o.com), Burma=B
n, Brenda W (BBurman@mwdh2o.com), David L. Bernhardt (DBernhardt@BHFS.com), = ElaineC@paramountfarming.com (ElaineC@paramountfarming.com), melissap@paramountfarming.com (melissap@paramountfarming.com)

Optional Attendees: kclark@westlandswater.org (kclark@westlandswater.org), = Glisson, Brenda S' (bglisson@mwdh2o.com) (bglisson@mwdh2o.com), VBarrio@mwdh2o.com (VBarrio@mwdh2o.com), tblakslee@kcwa.com (tblakslee@kcwa.com), Susan= Mussett (susan.mussett@sldmwa.org), Phillipmore, Bill (BillP@paramountfarmi=ng.com)

Cancelled: A meeting schedule for the current program direction & legislative need will be scheduled at the appropriate time.

=0D=0ACONFIDENTIAL: Interagency Memorandum per C2=A7 6254(a)

Purpose: On a monthly basis, review progress and provide direction to the support group(s).

Goal: Finish in less than 1 hour

Jim Watson, PE

Westlands Water District

Cell: 559 [REDACTED]

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---u+9IgfxHCm5AUMFXcgcW

Content-Type: text/html; charset="utf-8"

Content-Transfer-Encoding: quoted-printable

<p style=3D'font: 12px Verdana, Arial, sans-serif'>User James Watson (<a href=3D"<mailto:jwatson@westlandswater.org>">jwatson@westlandswater.org) has canceled the meeting.</p><table style=3D'font: 12px Verdana, Arial, sans-serif'><tr><td>Subject: </td><td>BDCP Legislation</td></tr><tr><td>Location: </td><td>Call: 800-[REDACTED] + [REDACTED] pass code [REDACTED]</td></tr><tr><td>When: </td><td>2015-03-16, 09:00 - 10:00 GMT -7:00 (60 minutes)</td></tr><tr><td>Organizer: </td><td>James Watson (<a href=3D"<mailto:jwatson@westlandswater.org>">jwatson@westlandswater.org)</td></tr><tr><td>Required Attendees: </td><td>Daniel Nelson (dan.nelson@sldmwa.org), bgoldie@valleywater.org (<a href=3D"<mailto:bgoldie@valleywater.org>">bgoldie@valleywater.org), JFiedler@valleywater.org (<a href=3D"<mailto:JFiedler@valleywater.org>">JFiedler@valleywater.org), Jill Duerig (<a href=3D"<mailto:jduerig@zone7water.com>">jduerig@zone7water.com), TBirmingham@Westlandswater.org (<a href=3D"<mailto:TBirmingham@Westlandswater.org>">TBirmingham@Westlandswater.org), Peltier Jason (<a href=3D"<mailto:jpeltier@westlandswater.org>">jpeltier@westlandswater.org), Susan Ramos (<a href=3D"<mailto:sramos@westlandswater.org>">sramos@westlandswater.org), jbeck@kcwa.com (<a href=3D"<mailto:jbeck@kcwa.com>">jbeck@kcwa.com), Brent Walthall (<a href=3D"<mailto:bwalthall@kcwa.com>">bwalthall@kcwa.com), jkightlinger@mwdh2o.com (<a href=3D"<mailto:jkightlinger@mwdh2o.com>">jkightlinger@mwdh2o.com), RPatterson

n@mwdh2o.com (<a href=3D"<mailto:RPatterson@mwdh2o.com>">RPatterson@mwdh2o.co=m), Burman,Brenda W (<a href=3D"<mailto:BBurman@mwdh2o.com>">BBurman@mwdh2o.com), David L. Bernhardt (<a href=3D"<mailto:DBernhardt@BHFS.com>">DBe=rnhardt@BHFS.com), ElaineC@paramountfarming.com (<a href=3D"<mailto:ElaineC@paramountfarming.com>">ElaineC@paramountfarming.com), melissap@paramountfarming.com (<a href=3D"<mailto:melissap@paramountfarming.com>">melissap@paramountfarming.com)</td></tr>
<td>Optional Attendees:</td><td>kclark@westlandswater.org (<a href=3D"<mailto:kclark@westlandswater.org>">kclark@westlandswater.org), Gl=isson,Brenda S' (bglisson@mwdh2o.com) (<a href=3D"<mailto:bglisson@mwdh2o.com>">bglisson@mwdh2o.com), VBarrio@mwdh2o.com (<a href=3D"<mailto:VBarrio@mwdh2o.com>">VBarrio@mwdh2o.com), tblakslee@kcwa.com (<a href=3D"<mailto:tblakslee@kcwa.com>">tblakslee@kcwa.com), Susan Mussett (susan.mussett@sldmwa.org), Phillimore, Bill (<a href=3D"<mailto:BillP@paramountfarming.com>">BillP@paramountfarming.com)</td></tr></table>

<p style=3D'font: 12px Verdana, Arial, sans-serif'>Cancelled: A meeting schedule for the current program direction & legislative need will be scheduled at the appropriate time.

CONFIDENTIAL: Interagency Memorandum per =C2=A7 6254(a)

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Jim Watson, PE

Westlands Water District

Cell: 559 [REDACTED]

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=

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component="vevent";
method="cancel";
name="meeting.ics"

Content-Transfer-Encoding: quoted-printable

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X-VERSION-KMS:6.2.0

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PRIORITY:1
SUMMARY:Cancelled: BDCP Legislation
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LOCATION:Call: 800-[REDACTED] pass code [REDACTED]
X-LABEL:0
CLASS:PUBLIC
X-MICROSOFT-CDO-INTENDEDSTATUS:FREE
SEQUENCE:9
ORGANIZER;CN=3D"James Watson":<mailto:jwatson@westlandswater.org>
ATTENDEE;RSVP=3DTRUE;X-SENT=3DTRUE;CN=3D"Daniel Nelson";CUTYPE=3DINDIVIDUAL=
:mailto:dan.nelson@sldmwa.org
ATTENDEE;RSVP=3DTRUE;X-SENT=3DTRUE;CN=3Dbgoldie@valleywater.org;CUTYPE=3DIN=DIVIDUAL:<mailto:bgoldie@valleywater.org>
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ATTENDEE;ROLE=3DOPT-PARTICIPANT;RSVP=3DTRUE;X-SENT=3DTRUE;CN=3Dkclark@westl=andswater.org;CUTYPE=3DINDIVIDUAL:<mailto:kclark@westlandswater.org>
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ATTENDEE;PARTSTAT=3DTENTATIVE;RSVP=3DTRUE;X-SENT=3DTRUE;CN=3Djkightlinger@mwdh2o.com;CUTYPE=3DINDIVIDUAL:<mailto:jkightlinger@mwdh2o.com>

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ATTENDEE;ROLE=3DOPT-PARTICIPANT;RSVP=3DTRUE;X-SENT=3DTRUE;CN=3Dkclark@westl=andswater.org;CUTYPE=3DINDIVIDUAL:<mailto:kclark@westlandswater.org>
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ATTENDEE;ROLE=3DOPT-PARTICIPANT;RSVP=3DTRUE;X-SENT=3DTRUE;CN=3D"Susan Musse=tt";CUTYPE=3DINDIVIDUAL:mailto:susan_mussett@sldmwa.org
ATTENDEE;ROLE=3DOPT-PARTICIPANT;PARTSTAT=3DTENTATIVE;RSVP=3DTRUE;X-SENT=3DT=RUE;CN=3D"Phillimore, Bill";CUTYPE=3DINDIVIDUAL:<mailto:BillP@paramountfarmi=ng.com>
ORGANIZER;CN=3D"James Watson":<mailto:jwatson@westlandswater.org>
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X-LABEL:0
END:VEVENT
END:VCALENDAR

---u+9IgfhCm5AUMFXcgcW--

From: Tom Birmingham
Sent: Monday, April 20, 2015 4:40 PM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: Transfer Language
Attachments: Transfer Language.docx

John,

Attached is the transfer language with Buckman's language modified pursuant to our discussion this afternoon.

Tom

(4) subject to the limitations on maximum transfer amounts, allow the period for exports for transfers to include October 1 through November 15, if the following conditions are met:

(A) the Secretary of the Interior determines that the environmental effects of the export of transfers are consistent with effects permissible under applicable law (including regulations); ~~and~~

(B) Delta conditions are suitable to allow the export for transfers consistent with conditions imposed by Central Valley Project and the State Water Project water right permits or licenses; ~~and~~

(C) the transfer will not violate any Federal or State law and will have no significant adverse effect on the Secretary's ability to deliver water pursuant to Central Valley Project contractual obligations or fish and wildlife obligations under the Central Valley Project Improvement Act, Pub. Law 102-575, Stat. 106 Stat. 4707, or the Department of Water Resources' ability to deliver water pursuant to State Water Project contractual obligations because of limitations in conveyance or pumping capacity.

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Formatted: Indent: Left: 1.5

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From: Tom Birmingham
Sent: Monday, April 20, 2015 4:52 PM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: Second Revision to 303
Attachments: Second Revision to 303.docx

John,

Attached is the revised language of Section 303, which I modified to reflect our discussion today. I may not have heard it correctly, but I understood that everyone on the call was okay with deleting subsection (b). Therefore, I deleted that subsection, and it would appear that its deletion eliminates the conflict between the refuges and Friant.

Tom

SEC. 303. NO REDIRECTED ADVERSE IMPACTS.

(a) ~~In implementing the provisions of this Act, the Secretary of the Interior and the Secretary of Commerce shall ensure that actions taken to implement comply with legal obligations imposed pursuant to or as a result of this Act or other applicable Federal law, including actions taken to comply with section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.),~~ shall not

~~—~~
(1) ~~result in involuntary reductions of water supply for individuals or districts who receive water from either the State Water Project or the Central Valley Project or water purveyors organized under California law that do not receive water from the State Water Project or the Central Valley Project. United States under water rights settlement contracts, exchange contracts, water service contracts, repayment contracts, refuge service or water supply contracts; or~~
(2) ~~cause redirected adverse water supply impacts to those within the Sacramento River watershed, the San Joaquin River watershed or the State Water Project service area;~~

(b) ~~Nothing in this Act is intended to modify (i) the existing terms, rights, or obligations of any Central Valley Project water service contract, repayment contract, refuge water supply contract, Sacramento River Settlement contract, San Joaquin River exchange contract; (ii) the existing terms, rights, or obligations of any State Water Project contract; or (iii) any judicial judgment, opinion, or decree regarding the terms, obligations, or limitations of such contracts.~~

From: Tom Birmingham
Sent: Tuesday, April 21, 2015 8:58 AM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: RE: Second Revision to 303
Attachments: Second Revision to 303.docx

John,

Here is a more concise version of the language I sent yesterday. As we discussed this morning, please distribute this version.

Tom

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Monday, April 20, 2015 4:52 PM
To: 'Watts, John (Feinstein)'
Cc: 'Bernhardt, David L.'
Subject: Second Revision to 303

John,

Attached is the revised language of Section 303, which I modified to reflect our discussion today. I may not have heard it correctly, but I understood that everyone on the call was okay with deleting subsection (b). Therefore, I deleted that subsection, and it would appear that its deletion eliminates the conflict between the refuges and Friant.

Tom

SEC. 303. NO REDIRECTED ADVERSE IMPACTS.

(a) ~~In implementing the provisions of this Act, t~~The Secretary of the Interior and the Secretary of Commerce shall ensure that actions taken to ~~implement comply with legal obligations imposed pursuant to or as a result of~~ this Act ~~or other applicable Federal law, including actions taken to comply with section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), shall do not~~ —

~~(1) result in involuntary reductions of water supply for individuals or districts who receive water from either the State Water Project or the Central Valley Project or water purveyors organized under California law that receive water from other sources. United States under water rights settlement contracts, exchange contracts, water service contracts, repayment contracts, refuge service or water supply contracts; or~~

~~(2) cause redirected adverse water supply impacts to those within the Sacramento River watershed, the San Joaquin River watershed or the State Water Project service area;~~

~~(b) Nothing in this Act is intended to modify (i) the existing terms, rights, or obligations of any Central Valley Project water service contract, repayment contract, refuge water supply contract, Sacramento River Settlement contract, San Joaquin River exchange contract; (ii) the existing terms, rights, or obligations of any State Water Project contract; or (iii) any judicial judgment, opinion, or decree regarding the terms, obligations, or limitations of such contracts.~~

From: Watts, John (Feinstein)
Sent: Wednesday, April 22, 2015 7:09 AM
To: 'tbirmingham@westlandswater.org'; Bernhardt, David L.
Subject: Request for call today to discuss confidential revised draft language for your review
Attachments: bill 4-22-15.docx

Tom and David,

I have attached some potential changes to the draft bill in redline, and would like to set up a time to talk to you today to discuss two changes requested by Tom Gibson:

- 1) Request to change the standard of "Consistent with avoiding additional adverse effects upon listed fish species beyond the range of those authorized under the Endangered Species Act" to strike "Endangered Species Act" and replace it with "smelt and salmonid biological opinions".
- 2) A request to reduce reliance on emergency consultation under section 106. Tom believes this can be done without changing the applicable standard mentioned in paragraph (1) above. Based on this general request, I have drafted a number of potential changes to section 106 which I would like to take you through on the call.

I have also included a few more minor formatting or technical changes in the attached draft.

I am available today before 1230 edt, between 130 and 330 edt, and between 4 and 5 edt. I could also talk after our water rights call, perhaps at about 6 edt.

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S. _____

California Emergency Drought Relief Act of 2015

114th CONGRESS
1st Session

IN THE SENATE OF THE UNITED STATES

April ___, 2015

AN ACT

To provide short-term water supplies to drought-stricken California.

*Be it enacted by the Senate and House of Representatives of the United States of America
in Congress assembled,*

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

- (a) Short Title- This Act may be cited as the “California Emergency Drought Relief Act of 2015”.
- (b) Table of Contents- The table of contents for this Act is as follows:
Sec. 1. Short title; table of contents.

TITLE I--CALIFORNIA EMERGENCY DROUGHT RELIEF

- Sec. 101. Definitions.
- Sec. 102. Operations under biological opinions.
- Sec. 103. Management of reverse flow under the smelt biological opinion.
- Sec. 104. Inflow / Export ratio for voluntary transfers.
- Sec. 105. Other emergency projects.
- Sec. 106. Temporary operational flexibility during periods of high outflow.
- Sec. 107. Calendar-based triggers.
- Sec. 108. Progress report.
- Sec. 109. Status of surface storage studies.

TITLE II—ACTIONS TO BENEFIT FISH AND REFUGES

- Sec. 201. Actions to benefit endangered fish populations.
- Sec. 202. Pilot program to protect native anadromous fish in the Stanislaus River.
- Sec. 203. CALFED invasive species pilot projects in the Sacramento-San Joaquin Bay Delta and its tributaries.
- Sec. 204. Actions to benefit refuges.

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TITLE III--PROTECTION OF THIRD-PARTY WATER RIGHTS

- Sec. 301. Offset for State Water Project.
- Sec. 302. Area of origin protections.
- Sec. 303. No redirected adverse impacts.
- Sec. 304. Allocations for Sacramento Valley Water Service Contractors.

TITLE IV--MISCELLANEOUS PROVISIONS

- Sec. 401. Effect on existing obligations.
- Sec. 402. Level of detail required for analysis.
- Sec. 403. Termination of authorities.

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TITLE I--CALIFORNIA EMERGENCY DROUGHT RELIEF

SEC. 101. DEFINITIONS.

In this title:

- (1) CENTRAL VALLEY PROJECT- The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (106 Stat. 4707).
- (2) DELTA- The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.
- (3) SALMONID BIOLOGICAL OPINION- The term “salmonid biological opinion” means the biological opinion issued by the National Marine Fisheries Service on June 4, 2009.
- (4) SECRETARIES- The term “Secretaries” means--
 - (A) the Secretary of Commerce; and
 - (B) the Secretary of the Interior.
- (5) SMELT BIOLOGICAL OPINION- The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008.
- (6) STATE- The term “State” means the State of California.
- (7) STATE WATER PROJECT- The term “State Water Project” means the water project described by California Water Code section 11550 et seq. and operated by the California Department of Water Resources.

SEC. 102. OPERATIONS UNDER BIOLOGICAL OPINIONS.

The Secretaries shall direct Central Valley project operations and allow State Water Project operations to provide the maximum supply of water possible under current hydrologic conditions;

- a) Operating within the existing smelt and salmonid biological opinions;
- b) Based on information and experience gained since the adoption of those biological opinions (such as management and monitoring of turbidity to protect Delta smelt and water supplies simultaneously, and improved understanding of salmon migration behaviors);
- c) Using the flexibility inherent in the biological opinions;
- d) Consistent with applicable law (including regulations); and

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e) Subject to the limitations imposed in Sections 302 and 303 of this Act.

SEC. 103. MANAGEMENT OF REVERSE FLOW UNDER THE SMELT BIOLOGICAL OPINION

(a) In implementing the provisions of the smelt biological opinion, or any successor biological opinion, pertaining to management of reverse flow in the Old and Middle Rivers, the Secretary shall not restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers that is less negative than the highest negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 absent a determination based on current scientific data that a less negative reverse flow rate is reasonably required to avoid adverse impacts beyond those considered under the smelt biological opinion.

(b) Any determination to restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers less negative than the highest negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 shall be explained in writing, including an explanation of the data examined and the connection between those data and the choice made, and promptly posted on the Fish and Wildlife Service website.

SEC. 104. INFLOW / EXPORT RATIO FOR VOLUNTARY TRANSFERS

- a) The Secretaries shall, in a timely manner, evaluate any proposal to increase flow in the San Joaquin River through a voluntary sale, transfer, or exchange of water from an agency with rights to divert water from the San Joaquin River or its tributaries and shall adopt a 1:1 inflow to export ratio for the increment of increased flow, as measured as a 3-day running average at Vernalis during the period from April 1 through May 31, that results from the voluntary sale, transfer, or exchange unless the Secretaries demonstrate that a 1:1 inflow to export ratio for that increment of increased flow will cause adverse impacts on species listed under the salmonid biological opinion beyond those considered under the biological opinion.
- b) Any individual sale, transfer, or exchange using a 1:1 inflow to export ratio adopted under the authority of this section may only proceed if
 - (1) the Secretary of the Interior determines that the environmental effects of the proposed sale, transfer, or exchange are consistent with effects permissible under applicable law (including regulations);
 - (2) Delta conditions are suitable to allow movement of the acquired, transferred, or exchanged water through the Delta consistent with the Central Valley Project's and the State Water Project's permitted water rights; and

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- (3) such voluntary sale, transfer or exchange of water results in flow that is in addition to flow that otherwise would occur in the absence of the voluntary sale, transfer or exchange.

SEC. 105. OTHER EMERGENCY PROJECTS

(a) In General- The applicable Secretary shall--

(1) authorize and implement actions to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using the best available science and findings from the United States Geological Survey on diurnal behavior of juvenile salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits, consistent with the California Endangered Species Act and operational criteria and monitoring set forth in the California State Water Resources Control Board's Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions, effective January 31, 2014, or a successor order;

(2)(A) issue all necessary permit decisions under the authority of the Secretaries using the shortest practicable process provided under applicable law (including regulations) to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality
; and
; and
; and

(B) The barriers and gates to be considered under Subparagraph (A) shall be designed in a manner such that the effects of the project shall not trigger formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536);

(3) complete all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on water transfer requests associated with voluntarily fallowing nonpermanent crops in the State, using the shortest practicable process provided under applicable law (including regulations);

(4) subject to the limitations on maximum transfer amounts, allow the period for exports for transfers to include October 1 through November 15, if the following conditions are met:

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(A) the Secretary of the Interior determines that the environmental effects of the export of transfers are consistent with effects permissible under applicable law (including regulations);

(B) Delta conditions are suitable to allow the export for transfers consistent with conditions imposed by Central Valley Project and the State Water Project water right permits or licenses; and

C) the transfer will not violate any Federal or State law and will have no significant adverse effect on the Secretary's ability to deliver water pursuant to Central Valley Project contractual obligations or fish and wildlife obligations under the Central Valley Project Improvement Act, Pub. Law 102-575, Stat. 106 Stat. 4707, or the Department of Water Resources' ability to deliver water pursuant to State Water Project contractual obligations because of limitations in conveyance or pumping capacity.

(5) allow any North of Delta agricultural water service or refuge service contractor with unused Central Valley Project water to take delivery of such unused water through April 15, of the contract year immediately following the contract year in which such water was allocated, if--

(A) the contractor requests the extension; and

(B) the requesting contractor certifies that, without the extension, the contractor would have insufficient supplies to adequately meet water delivery obligations; and

(6) in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, and in coordination and in conjunction with non-federal entities, create partnerships to implement instream and offsite projects in the Delta and upstream in the Sacramento River and San Joaquin basins, to include important side channel, riparian, inter-tidal, and floodplain habitats for fish reproduction and rearing; fish screens; and operational and other habitat improvements, that increase the amount of usable water supplies for multiple purposes and that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to actions taken under this Act.

(b) Accelerated Project Decision and Elevation-

(1) IN GENERAL- Upon the request of the Governor, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions relating to a project or operation to provide additional water supplies or address emergency drought conditions pursuant to subsection (a) and section 102, including but not limited to water transfers and the placement of temporary rock barriers.

(2) REQUEST FOR RESOLUTION-

(A) IN GENERAL- Upon the request of the Governor, the Secretary of Commerce, or the head of another Federal agency responsible for carrying

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out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide emergency water supplies.

(B) MEETING- The Secretary of the Interior shall convene a meeting requested under subparagraph (A) not later than 7 days after receiving the meeting request.

(3) NOTIFICATION- Upon receipt of a request for a meeting under this subsection, the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including the project to be reviewed and the date for the meeting.

(4) DECISION- Not later than 10 days after the date on which a meeting is requested under paragraph (2), the head of the relevant Federal agency shall issue a final decision on the project in writing.

(5) MEETING CONVENED BY SECRETARY- The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

SEC. 106. TEMPORARY OPERATIONAL FLEXIBILITY DURING PERIODS OF HIGH OUTFLOW.

(b) Days of high outflow. - Subsection (a) is in effect on any day or days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey. [checking with BOR if this is the appropriate threshold]

(c) Compliance With ESA Authorizations.- In carrying out this section, the Secretaries may continue to impose any requirements under the smelt and salmonid biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid additional adverse effects on a listed species beyond the range of those authorized under the smelt and salmonid biological opinions.

(d) Other Environmental Protections.-

(1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law, including State Water Resources Control Board Decision 1641, as it may be implemented in any given year.

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(2) During the first flush of sediment out of the Delta [I need more technical definition] in each water year, and provided that such determination is based upon objective evidence, OMR flow may be managed at rates less negative than the highest negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 for a minimum duration to avoid movement of adult Delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants.

(3) This section shall not affect the application of the salmonid biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those authorized under the Endangered Species Act of 1973. In addition to any other actions to benefit water supply, the Secretary and the Secretary of Commerce shall consider allowing through-Delta water transfers to occur during this period.

(4) During operations under this section, the Secretary of the Interior, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to ensure incidental take levels are not exceeded, and to identify potential negative impacts, if any, and actions necessary to avoid or mitigate impacts of the temporary operational flexibility to species listed under the Endangered Species Act of 1973.

(5) During operations under this section, the Secretaries shall confer with the Director of the California Department of Fish and Wildlife regarding the potential impacts to species listed under the California Endangered Species Act that are not listed under the Endangered Species Act 1973.

(e) Authority.— The Secretaries' actions under this section are authorized by:

- (1) The flexibility inherent in the smelt and salmon biological opinions;
- (2) The emergency consultation provisions of the Endangered Species Act of 1973 and its implementing regulation at section 402.05, title 50, Code of Federal Regulations; and
- (3) This Act.

(f) -Aftermath-

At the conclusion of the informal consultation under this section, the Secretary of At the conclusion of the informal consultation under this section, the Secretary of At the conclusion of the informal consultation under this section, the Secretary of At the conclusion of the informal consultation under this section, the Secretary of

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SEC. 107. CALENDAR-BASED TRIGGERS.

Notwithstanding any calendar based trigger described in the salmonid biological opinion Reasonable and Prudent Alternative, operations of the Central Valley Project and the State Water Project shall not be limited by the Reasonable and Prudent Alternative unless current monitoring data indicate that the actions described in the Reasonable and Prudent Alternative are reasonably required to avoid the impacts identified by the salmonid biological opinion.

SEC. 108. PROGRESS REPORT.

Ninety days after the date of the enactment of this Act and every 90 days thereafter, the Secretaries shall provide a progress report describing the implementation of sections 102 and 103 to the Committee on Natural Resources in the House of Representatives and the Committee on Energy and Natural Resources in the Senate.

SEC. 109. STATUS OF SURFACE STORAGE STUDIES.

One year after the date of the enactment of this Act, the Secretary of the Interior shall provide a progress report on the status of feasibility studies undertaken pursuant to clauses (i) and (ii) of section 103(d)(1)(A) of the Water Supply, Reliability, and Environmental Improvement Act (Public Law 108-361) to the Committee on Natural Resources in the House of Representatives and the Committee on Energy and Natural Resources in the Senate. The report shall include timelines for study completion, draft environmental impact statements, final environmental impact statements, and Records of Decision.

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TITLE II—ACTIONS TO BENEFIT FISH AND REFUGES

SEC. 201. ACTIONS TO BENEFIT ENDANGERED FISH POPULATIONS.

The Secretary of the Interior, in consultation with the Secretary of Commerce, shall implement the following actions to increase protections of fish listed under the smelt and salmon biological opinions:

- a) **Electronic Blocking Barrier at the Delta Cross Channel Gates** – In coordination with the State Water Resources Control Board and the California Department of Fish and Wildlife:

- (1) report to Congress within 90 days of enactment of this Act on the current progress of evaluating electronic blocking barriers at Deadhorse Island to prevent straying of endangered salmonids through the Delta Cross Channel Gates; and
- (2) report to Congress within 1 year of enactment of this Act on the effectiveness of such electronic blocking barriers in preventing straying of endangered salmonids.

- b) **Gravel and Rearing Area Additions to the Upper Sacramento River** –

- (1) In coordination with the California Department of Fish and Wildlife, provide within 180 days of enactment of this Act:

- a. a report on the cost and effectiveness of additional gravel that were placed downstream of the Keswick Dam in 2013 and 2014 in improving salmon spawning rates; and
- b. a report on the feasibility of implementing gravel additions at additional locations to improve salmon spawning rates, and the timetable for implementing any approved locations;
- c. a report on the feasibility of constructing or restoring additional natural rearing areas in the upper mainstem Sacramento River to improve salmon population recovery.

- (2) If the feasibility reports in Paragraph (1) determine that additions of gravel and natural rearing areas are feasible and beneficial for protecting and recovering fish populations, begin implementation of those additions within 1 year of the issuance of the feasibility reports.

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- c) **Alternative Hatchery Salmon Release Strategies** – The Secretary of the Interior, in consultation with the Secretary of Commerce, shall:
 - (1) Establish pilot programs that would test alternative release strategies for hatchery-raised winter-run salmon to reduce mortality rates beyond those experienced currently, including alternative release locations, trucking options, or barging options.
 - (2) Within 3 years of enactment of this Act, and annually thereafter, report to Congress on the progress and results of the pilot programs established in Paragraph (1), and provide recommendations on whether those pilot programs should be continued.
- d) **Reduce Predator Habitat** – within 2 years of enactment of this Act, implement a pilot program to:
 - (1) Identify natural and artificial factors in the Sacramento River and the Sacramento-San Joaquin River Delta watershed that could be providing favorable predatory fish habitat for fish that prey on juvenile salmon;
 - (2) Collect scientific data at those locations to determine if those natural or artificial factors are contributing to predation of endangered fish; and
 - (3) Provide recommendations on whether those natural or artificial factors that enable the formation or continuation of predatory fish habitat could be feasibly and effectively modified, in compliance with all applicable state and federal laws and regulations, to reduce predation.
- e) **Eliminate / Reduce Lighting at In-River Structures** – In consultation with the California Department of Fish and Wildlife and other relevant local and state authorities:
 - (1) Assess the effectiveness of lowering light intensity at artificial structures in the Sacramento-San Joaquin River Delta to reduce predation of endangered fish; and
 - (2) Implement actions to lower light intensity at other artificial structures in the Delta if the assessment in Paragraph (1) determines that the action is effective in reducing predation.
- f) **Evaluate and Improve Delta Pump Fish Salvage System** – In consultation with the U.S. Fish & Wildlife Service, the National Marine Fisheries Service, and the California Department of Fish and Wildlife:
 - (1) evaluate and report to Congress within 1 year of enactment of this Act on alternatives to re-deposit salvaged salmon smolts and other fish from the Delta that would reduce predation losses, and to reduce predation at the existing fish salvage system.

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(2) upon identification of feasible alternatives, implement those alternatives within 2 years of issuance of the report in paragraph (1).

g) **Reduce Predator Habitat at the Tracy Fish Facility –**

(1) Provide within 180 days of enactment of this Act a report on the Bureau of Reclamation's evaluation of an electronic crowder system to remove and relocate predators of endangered fish from the vicinity of the Tracy Fish Facility, including a recommendation on whether the system can be feasibly installed and implemented.

(2) If the report in Paragraph (1) finds that the system is feasible, implement the system within 2 years of issuance of the report.

h) **Trap and Barge Pilot Project to Increase Survival Through the Delta –** The Assistant Administrator and the Commissioner shall, in collaboration with the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife, water agencies, and other interested parties, design, permit, implement and evaluate a pilot program to test the efficacy of an experimental trap and barge program to improve survival of juvenile salmonids emigrating from the San Joaquin watershed through the Delta, as further described below.

(1) Within 30 days of enactment, the Assistant Administrator and the Commissioner shall convene a working group of the relevant agencies and other interested parties through which to develop and execute a plan for the design, budgeting, implementation and evaluation of such a pilot program, utilizing existing expertise on such trap and barge programs as may be available. Such plan shall detail a schedule and budget for the program, and identify the responsible parties for each element of the program.

(2) The Assistant Administrator and the Commissioner shall provide an opportunity for 30 days of public review and comment on the pilot program and also simultaneously seek an expeditious independent peer review of the program to improve its rigor and likelihood of success.

(3) Within 60 days of completion of (2), above, the Assistant Administrator and the Commissioner shall complete the necessary design and evaluations of the pilot program and seek such permits or other regulatory authorizations as may be required under federal law for its prompt implementation and evaluation by the Assistant Administrator, the Commissioner or such other parties as they determine most suitable.

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(4) The Assistant Administrator and the Commissioner shall seek to commence implementation of the pilot program in 2016 or as soon thereafter as is possible, and shall conduct such pilot for such period of time as needed to evaluate the efficacy of the program to improve survivals across a range of environmental conditions.

(5) The Assistant Administrator and the Commissioner shall jointly report annually to the Senate Committees on the Environment and Public Works and Energy and Natural Resources and the House Committee on Natural Resources their progress in implementing this section, estimated survival rates through the Delta for both juvenile salmonids that were barged through the Delta and those that were not barged, and if survival rates are significantly higher for barged fish as compared to other outmigrating smolts, the Assistant Administrator's and Commissioner's recommendations regarding broadening the pilot program and any relevant recommendations pursuant to section 203.

SEC. 202. PILOT PROGRAM TO PROTECT NATIVE ANADRAMOUS FISH IN THE STANISLAUS RIVER.

(a) Establishment of Non-native Predator Fish Removal Program- The Assistant Administrator and districts, in consultation with the United States Fish and Wildlife Service and the California Department of Fish and Wildlife, shall jointly develop and conduct a pilot non-native predator fish removal program to remove non-native striped bass, smallmouth bass, largemouth bass, black bass, and other non-native predator fishes from the Stanislaus River. The pilot program shall--

- (1) be scientifically based;
- (2) include methods to quantify the number and size of predator fishes removed each year, the impact of such removal on the overall abundance of predator fishes, and the impact of such removal on the populations of juvenile anadromous fish found in the Stanislaus River by, among other things, evaluating the number of juvenile anadromous fish that migrate past the rotary screw trap located at Caswell;
- (3) among other methods, use wire fyke trapping, portable resistance board weirs, and boat electrofishing, which are among the most effective predator collection techniques that minimize effects to native anadromous fish;
- (4) be developed, including the application for all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), for the performance of the pilot program, not later than 6 months after the date of the enactment of this Act; and
- (5) be implemented as quickly as possible following the issuance of all necessary scientific research and species enhancement permits needed to begin the pilot program.

(b) Management- The management of the pilot program shall be the joint responsibility of the Assistant Administrator and the districts. Such parties shall work collaboratively to ensure the performance of the pilot program, and shall discuss and agree upon, among other things, changes in the structure, management, personnel, techniques, strategy, data collection, reporting and conduct of the pilot program.

(c) Conduct-

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- (1) IN GENERAL- By agreement between the Assistant Administrator and the participating districts, the pilot program may be conducted by their own personnel, qualified private contractors hired by the districts, personnel of, on loan to, or otherwise assigned to NOAA Fisheries, or a combination thereof.
- (2) PARTICIPATION BY NOAA FISHERIES- In the event the districts elect to conduct the program using their own personnel or qualified private contractors hired by them, the Assistant Administrator has the option to assign an employee of, on loan to, or otherwise assigned to NOAA Fisheries, to be present for all activities performed in the field. Such presence shall ensure compliance with the agreed upon elements specified in subsection (b). The districts shall pay 100 percent of the cost of such participation as specified in subsection (d).

- (3) TIMING OF ELECTION- The districts shall notify the Assistant Administrator of their election on or before October 15 of each calendar year of the pilot program, which election shall apply to the work performed in the subsequent calendar year.

(d) Funding-

- (1) CONTRIBUTED FUNDS- The Assistant Administrator is authorized to receive and expend contributed funds for the purposes for which the funds contributed in a like manner as if said sums had been specifically appropriated for said purposes.
- (2) ANNUAL FUNDING- The districts shall be responsible through contributed funds for 100 percent of the cost of the pilot program. On or before December 1 of each year of the pilot program, the Assistant Administrator shall submit to the districts an estimate of the cost to be incurred by the NOAA Fisheries in the following calendar year, if any, including the cost of any data collection and posting under subsection (e). If an amount equal to the estimate is not provided through contributed funds, or any other fund as directed by the Assistant Administrator, by the districts on or before December 31 of each year,
 - (A) the NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled, and
 - (B) the districts shall be prohibited from conducting any aspect of the pilot program, until full payment is made by the districts.
- (3) ACCOUNTING- On or before September 1 of each calendar year, the Assistant Administrator shall provide an accounting of the prior calendar year's expenses to the districts. If the estimate paid by the districts was less than the actual costs incurred by the NOAA Fisheries, the districts shall have until September 30 of that calendar year to pay the difference to the fund identified by the Assistant Administrator in subsection (d)(1), or NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled. If the estimate paid by the districts was greater than the actual costs incurred by the NOAA Fisheries, then a credit shall be provided to the districts, which shall be deducted from the estimate payment the districts must make for the work performed by the NOAA Fisheries, if any, in the next calendar year.

(e) Reporting and Evaluation-

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(1) IN GENERAL- On or before the 15th day of each month, the Assistant Administrator shall post on the website of the NOAA Fisheries a tabular summary of the raw data collected in the prior month.

(2) REPORT- On or before June 30 of the calendar year following the completion of the program, the Assistant Administrator and districts shall jointly submit a report for peer review that--

- (A) discusses the findings and conclusions of the pilot program;
- (B) synthesizes the data collected under paragraph (1); and
- (C) makes recommendations for further study and action.

(f) Permits Process-

(1) Not later than 180 days after filing of an application, the Assistant Administrator and the districts, the Secretary of the Interior, the Secretary of Commerce, or both, as appropriate, shall issue all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act (16 U.S.C. 1539(a)(1)), for the performance of the pilot program.

(2) All permits issued shall be in the name of the NOAA Fisheries and the districts.

(3) Districts may delegate the authority to administer the permit authority to any qualified private contractor retained in accordance with subsection (c).

(4) The pilot program, including amendments thereto by the appropriate Federal and State agencies, shall be designed to meet the requirements of a conservation plan that complies with the requirements of Section 10(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(2)).

(g) Emergency Environmental Reviews – To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with Section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this section.

(h) Definitions- For the purposes of this section:

(1) ASSISTANT ADMINISTRATOR- The term 'Assistant Administrator' means the Assistant Administrator of National Oceanic and Atmospheric Administration, NOAA Fisheries

(2) DISTRICTS- The term 'districts' means the Oakdale Irrigation District and the South San Joaquin Irrigation District.

(3) PILOT PROGRAM- The term 'program' means the pilot non-native predator removal program established under this section.

SEC. 203. CALFED INVASIVE SPECIES PILOT PROJECTS IN THE

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SACRAMENTO-SAN JOAQUIN BAY DELTA AND ITS TRIBUTARIES.

(a) FINDINGS.—Congress finds that—

- (1) The Sacramento-San Joaquin Bay Delta and its Tributaries—
 - (A) is one of the largest and most diverse estuaries in the United States,
 - (B) is a natural treasure and a vital link in California's water system, and
 - (C) has native biodiversity important to the ecological and economic systems of California, including water deliveries to agriculture, municipalities and to the environment and fisheries industries, and
 - (D) has river tributaries important for rearing of salmon and steelhead smolts which experience a high level of predation from non-native species.
- (2) Past, present and future introductions of invasive species are and will be a major factor in the decline of native pelagic and anadromous endangered or threatened species in the Sacramento-San Joaquin Bay Delta and its tributaries.
- (3) More than 250 nonnative aquatic and plant species have been introduced into the Delta and its tributaries; of these, at least 185 species have become established and have altered the Sacramento-San Joaquin Bay Delta watershed's ecosystem.
- (4) The Bay Delta Conservation Plan, the Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-run Chinook Salmon and Central Valley Spring-run Chinook Salmon and the Distinct Population Segment of the Central Valley Steelhead, the Recovery Plan for the Sacramento-San Joaquin Delta Native Fishes, and the multiple 5 year reviews of those plans all highlight that introduced nonnative invasive species are a significant factor in the decline of native fish species. These nonnative species, which include invasive aquatic vegetation, predators, and competitors, directly or indirectly cause biological stress for pelagic and anadromous endangered or threatened fish species in the Sacramento-San Joaquin Bay-Delta and its tributaries.
- (5) If threats by nonnative species to native fish species are not addressed, there is a probability that native species of the Sacramento-San Joaquin Bay-Delta watershed's pelagic and anadromous community will go extinct.
- (6) The CALFED legislation (Public Law 108-361) authorized a program to prevent, control, and eradicate invasive species, but it has not been implemented to date.
- (7) A focused pilot program needs to be conducted within the Delta and river tributaries to reduce threats to native listed species by nonnative species. Reducing nonnative stressors on native listed species will contribute to both native listed species recovery and lowering the impact on downstream water users as those native listed species recover.

(b) PILOT PROJECTS TO IMPLEMENT CALFED INVASIVE SPECIES PROGRAM.

- (1) Not later than January 1, 2017, the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall begin pilot projects to implement the invasive species program, including prevention,

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control and eradication authorized pursuant to Section 103(d)(6)(A)(iv) of Public Law 108-361. The pilot projects shall:

- (A) seek to reduce invasive aquatic vegetation, predators, and other competitors which are major factors in the decline of native listed pelagic and anadromous species that occupy the Sacramento and San Joaquin Rivers and their tributaries and the Sacramento-San Joaquin Bay-Delta; and
- (B) address how to remove, reduce, or control the effects of species including: Asiatic clams, silversides, gobies, Brazilian water weed, largemouth bass, smallmouth bass, striped bass, crappie, bluegill, white and channel catfish, and brown bullheads.

(2) The Secretary of the Interior's efforts, in consultation with the Secretary of Commerce, shall consist of the following phases:

- (A) Phase 1. The Secretary of the Interior shall convene a panel of experts, including experts recommended by the State of California, to:
 - (i) Identify the non-native species having the greatest impact on the viability of native pelagic and anadromous native listed species; and
 - (ii) Identify the non-native species for which actions to reduce or control the population is determined to be possible; and
 - (iii) Design a study to reduce the non-native species identified in clauses (i) and (ii) and prepare a cost estimate to implement this study.
- (B) Phase 2. The Secretary of the Interior, in consultation with the Secretary of Commerce, shall test the general viability of nonnative reduction methods, including either direct predator removal or alteration of channel conditions, or some combination thereof, through pilot projects at multiple sites in addition to the projects on the Stanislaus River pursuant to Section 202, including known hotspots of predator aggregation or activity, such as:
 - (i) Clifton Court Forebay,
 - (ii) Central Valley Project intakes,
 - (iii) Head of Old River,
 - (iv) Georgiana Slough,
 - (v) Old and Middle Rivers,
 - (vi) Franks Tract,
 - (vii) Paintersville Bridge,
 - (viii) individual river tributaries important for wild populations of anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,
 - (ix) Human-made submerged structures, and
 - (x) Salvage release sites.

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(C) Phase 3. If the Secretary of the Interior determines that the pilot projects as a group are effective, the Secretary and the Secretary of Commerce shall implement nonnative reduction methods at a larger number of sites, incorporating information learned during the first and second phase.

(3) The Secretary of the Interior shall collect data associated with the implementation of the projects above, and shall specifically collect data on the impact on

- (A) pelagic and anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,
- (B) water quality, and
- (C) water supply.

(4) After assessing the data described in subparagraph (2), the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall, if appropriate, annually recommend revisions to the reasonable and prudent alternatives contained in the salmonid biological opinion and the smelt biological opinion, or other administrative federal requirements governing the operation of the Central Valley Project and the State Water Project, that are likely to produce additional fishery, water quality, and water supply benefits.

(c) EMERGENCY ENVIRONMENTAL REVIEWS. To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this program.

SEC. 204. ACTIONS TO BENEFIT REFUGES.

In fiscal year 2015-2016 and in any successive year when there is a declaration of drought emergency by the Governor of California, in addition to funding under section 3407 of the Central Valley Project Improvement Act (106 Stat. 4706), there is authorized to be appropriated to the Secretary \$2 million for the acceleration and completion of water infrastructure and conveyance facilities necessary to achieve full water deliveries to Central Valley wildlife refuges and habitat areas pursuant to section 3406(d) of that Act.

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TITLE III—PROTECTION OF THIRD-PARTY WATER RIGHTS

SEC. 301. OFFSET FOR STATE WATER PROJECT

(a) Implementation Impacts- The Secretary of the Interior shall confer with the California Department of Fish and Wildlife in connection with the implementation of this Act on potential impacts to any consistency determination for operations of the State Water Project issued pursuant to California Fish and Game Code section 2080.1.

(b) Additional Yield- If, as a result of the application of this Act, the California Department of Fish and Wildlife

(c) Notification Related to Environmental Protections- The Secretary of the Interior shall notify the Director of the California Department of Fish and Wildlife regarding any changes in the manner in which reasonable and prudent alternatives related to the smelt biological opinion or the salmonid biological opinion are implemented and shall confirm that the changes maintain an appropriate level of protection for the species covered by the opinions.

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SEC. 302. AREA OF ORIGIN PROTECTIONS.

- (a) In General- Nothing in this Act shall diminish, impair, or otherwise affect in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections, including, but not limited to, rights to water appropriated prior to December 19, 1914, provided under California law. This Act does not limit or otherwise affect the application of California Water Code Sections 10505, 10505.5, 11128, 11460, and 11463, and Sections 12200 to 12220, inclusive.
- (b) Contracts- With respect to individuals and entities with water rights on the Sacramento River, the mandates of this section may be met, in whole or in part, through a contract with the Secretary executed pursuant to section 14 of Public Law 76-260; 53 Stat. 1187 (43 U.S.C. 389) that is in conformance with the Sacramento River Settlement Contracts renewed by the Secretary in 2005.

SEC. 303. NO REDIRECTED ADVERSE IMPACTS.

The Secretary of the Interior and the Secretary of Commerce shall ensure that actions taken to implement this Act do not -- result in the involuntary reduction of water supply to individuals or districts do not -- result in the involuntary reduction of water supply to individuals or districts do not --

SEC. 304. ALLOCATIONS FOR SACRAMENTO VALLEY WATER
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(a) Allocations

- (1) IN GENERAL- Subject to paragraph (2) and subsection (b), the Secretary of the Interior shall make every reasonable effort in the operation of the Central Valley Project, to allocate water provided for irrigation purposes to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed in compliance with the following:
- (A) Not less than 100 percent of their contract quantities in a 'Wet' year.
(B) Not less than 100 percent of their contract quantities in an 'Above Normal' year.

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- (C) Not less than 100 percent of their contract quantities in a `Below Normal' year that is preceded by an `Above Normal' or a `Wet' year.
 - (D) Not less than 50 percent of their contract quantities in a `Dry' year that is preceded by a `Below Normal,' an `Above Normal,' or a `Wet' year.
 - (E) In all other years not identified herein, not less than twice the allocation percentage to south-of-Delta Central Valley Project agricultural water service contractors, up to 100 percent; provided, that nothing herein shall preclude an allocation to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed that is greater than twice the allocation percentage to South-of-Delta Central Valley Project agricultural water service contractors.
- (2) CONDITIONS- The Secretary's actions under paragraph (a) shall be subject to--
- (A) the priority of individuals or entities with Sacramento River water rights, including those with Sacramento River Settlement Contracts, that have priority to the diversion and use of Sacramento River water over water rights held by the United States for operations of the Central Valley Project;
 - (B) the United States obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors; and
 - (C) the Secretary's obligation to make water available to managed wetlands pursuant to section 3406(d) of the Central Valley Project Improvement Act (Public Law 102-575).

(b) Protection of Municipal and Industrial Supplies- Nothing in subsection (a) shall be deemed to--

- (1) modify any provision of a water service contract that addresses municipal and industrial water shortage policies of the Secretary;
- (2) affect or limit the authority of the Secretary to adopt or modify municipal and industrial water shortage policies; or
- (3) affect or limit the authority of the Secretary to implement municipal and industrial water shortage policies.

Neither subsection (a) nor the Secretary's implementation of subsection (a) shall constrain, govern or affect, directly or indirectly, the operations of the Central Valley Project's American River Division or any deliveries from that Division, its units or its facilities.

(c) Allocations made pursuant to subsection (a) shall not affect allocations to Central Valley Project municipal and industrial water service contractors by either increasing or decreasing allocations to such contractors compared to allocations such contractors would have received absent subsection (a).

(d) No Effect on Allocations- This section shall not--

- (1) affect the allocation of water to Friant Division contractors; or
- (2) result in the involuntary reduction in contract water allocations to individuals or entities with contracts to receive water from the Friant Division.

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(e) Program for Water Rescheduling- The Secretary shall direct that the United States Bureau of Reclamation develop and implement a program to provide for the opportunity for existing Central Valley Project agricultural water service and refuge service contractors within the Sacramento River Watershed to reschedule water, provided for under their Central Valley Project contracts, from one year to the next provided, that the rescheduling of water by such contractors shall not interfere with Central Valley Project operations or diminish the Project's ability to meet its contract obligations.

(f) Definitions- In this section:

- (1) The term “existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed” means water service contractors within the Shasta, Trinity, and Sacramento River Divisions of the Central Valley Project, that have a water service contract in effect, on the date of the enactment of this section, that provides water for irrigation.
- (2) The year type terms used in subsection (a) have the meaning given those year types in the Sacramento Valley Water Year Type (40-30-30) Index.

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TITLE IV--MISCELLANEOUS PROVISIONS

SEC. 401. EFFECT ON EXISTING OBLIGATIONS.

- (a) IN GENERAL.—Nothing in this title preempts or modifies any existing obligation of the United States under Federal reclamation law to operate the Central Valley Project in conformity with State law, including established water rights priorities.
- (b) OBLIGATIONS UNDER CENTRAL VALLEY PROJECT IMPROVEMENT ACT.—Nothing in this Act affects or modifies any existing obligation under the Central Valley Project Improvement Act (title 34 of Public Law 102-575).

SEC. 402. LEVEL OF DETAILED REQUIRED FOR ANALYSIS.

In articulating the determinations required under this Act, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the time frame permitted for timely decision-making in response to changing conditions in the Delta.

SEC. 403. TERMINATION OF AUTHORITIES.

This Act shall expire on September 30, 2017, or the date on which the Governor of the State suspends the state of drought emergency declaration, whichever is later.

From: Tom Birmingham
Sent: Wednesday, April 22, 2015 9:04 AM
To: 'Watts, John (Feinstein)'; 'Bernhardt, David L.'
Subject: RE: Request for call today to discuss confidential revised draft language for your review

I am available anytime between 11:00 a.m. and 1:00 p.m. for a call.

From: Watts, John (Feinstein) [mailto:John_Watts@feinstein.senate.gov]
Sent: Wednesday, April 22, 2015 7:09 AM
To: 'tbirmingham@westlandswater.org'; Bernhardt, David L.
Subject: Request for call today to discuss confidential revised draft language for your review

Tom and David,

I have attached some potential changes to the draft bill in redline, and would like to set up a time to talk to you today to discuss two changes requested by Tom Gibson:

- 1) Request to change the standard of "Consistent with avoiding additional adverse effects upon listed fish species beyond the range of those authorized under the Endangered Species Act" to strike "Endangered Species Act" and replace it with "smelt and salmonid biological opinions".
- 2) A request to reduce reliance on emergency consultation under section 106. Tom believes this can be done without changing the applicable standard mentioned in paragraph (1) above. Based on this general request, I have drafted a number of potential changes to section 106 which I would like to take you through on the call.

I have also included a few more minor formatting or technical changes in the attached draft.

I am available today before 1230 edt, between 130 and 330 edt, and between 4 and 5 edt. I could also talk after our water rights call, perhaps at about 6 edt.

From: Watts, John (Feinstein)
Sent: Wednesday, April 22, 2015 9:07 AM
To: Tom Birmingham; 'Bernhardt, David L.'
Subject: RE: Request for call today to discuss confidential revised draft language for your review

Great – let's talk at 2 pm eastern time, 11 am pacific time. I will call each of you then, unless someone wants to set up a conference line.

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
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From: Tom Birmingham
Sent: Wednesday, April 22, 2015 9:23 AM
To: 'Bernhardt, David L.'; 'Watts, John (Feinstein)'
Subject: RE: Request for call today to discuss confidential revised draft language for your review

Got it.

From: Bernhardt, David L. [mailto:DBernhardt@BHFS.com]
Sent: Wednesday, April 22, 2015 9:15 AM
To: 'Watts, John (Feinstein)'; Tom Birmingham
Subject: RE: Request for call today to discuss confidential revised draft language for your review

John and Tom: Here is a call in number: [REDACTED] code [REDACTED]

From: Watts, John (Feinstein) [mailto:John_Watts@feinstein.senate.gov]
Sent: Wednesday, April 22, 2015 12:07 PM
To: Tom Birmingham; Bernhardt, David L.
Subject: RE: Request for call today to discuss confidential revised draft language for your review

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From: Watts, John (Feinstein)
Sent: Wednesday, April 22, 2015 11:42 AM
To: Bernhardt, David L.; Tom Birmingham
Subject: Current confidential language
Attachments: bill 4-22-15b.docx

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S. _____

California Emergency Drought Relief Act of 2015

114th CONGRESS
1st Session

IN THE SENATE OF THE UNITED STATES

April ___, 2015

AN ACT

To provide short-term water supplies to drought-stricken California.

*Be it enacted by the Senate and House of Representatives of the United States of America
in Congress assembled,*

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

- (a) Short Title- This Act may be cited as the “California Emergency Drought Relief Act of 2015”.
- (b) Table of Contents- The table of contents for this Act is as follows:
Sec. 1. Short title; table of contents.

TITLE I--CALIFORNIA EMERGENCY DROUGHT RELIEF

- Sec. 101. Definitions.
- Sec. 102. Operations under biological opinions.
- Sec. 103. Management of reverse flow under the smelt biological opinion.
- Sec. 104. Inflow / Export ratio for voluntary transfers.
- Sec. 105. Other emergency projects.
- Sec. 106. Temporary operational flexibility during periods of high outflow.
- Sec. 107. Calendar-based triggers.
- Sec. 108. Progress report.
- Sec. 109. Status of surface storage studies.

TITLE II—ACTIONS TO BENEFIT FISH AND REFUGES

- Sec. 201. Actions to benefit endangered fish populations.
- Sec. 202. Pilot program to protect native anadromous fish in the Stanislaus River.
- Sec. 203. CALFED invasive species pilot projects in the Sacramento-San Joaquin Bay Delta and its tributaries.
- Sec. 204. Actions to benefit refuges.

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TITLE III--PROTECTION OF THIRD-PARTY WATER RIGHTS

- Sec. 301. Offset for State Water Project.
- Sec. 302. Area of origin protections.
- Sec. 303. No redirected adverse impacts.
- Sec. 304. Allocations for Sacramento Valley Water Service Contractors.

TITLE IV--MISCELLANEOUS PROVISIONS

- Sec. 401. Effect on existing obligations.
- Sec. 402. Level of detail required for analysis.
- Sec. 403. Termination of authorities.

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TITLE I--CALIFORNIA EMERGENCY DROUGHT RELIEF

SEC. 101. DEFINITIONS.

In this title:

- (1) CENTRAL VALLEY PROJECT- The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (106 Stat. 4707).
- (2) DELTA- The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.
- (3) SALMONID BIOLOGICAL OPINION- The term “salmonid biological opinion” means the biological opinion issued by the National Marine Fisheries Service on June 4, 2009.
- (4) SECRETARIES- The term “Secretaries” means--
 - (A) the Secretary of Commerce; and
 - (B) the Secretary of the Interior.
- (5) SMELT BIOLOGICAL OPINION- The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008.
- (6) STATE- The term “State” means the State of California.
- (7) STATE WATER PROJECT- The term “State Water Project” means the water project described by California Water Code section 11550 et seq. and operated by the California Department of Water Resources.

SEC. 102. OPERATIONS UNDER BIOLOGICAL OPINIONS.

The Secretaries shall direct Central Valley project operations and allow State Water
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operations and allow State Water Project operations to provide the maximum supply of
water possible under current hydrologic conditions;

- a) Operating within the existing smelt and salmonid biological opinions;
- b) Based on information and experience gained since the adoption of those biological opinions (such as management and monitoring of turbidity to protect Delta smelt and water supplies simultaneously, and improved understanding of salmon migration behaviors);
- c) Maximizing the flexibility in the biological opinions;
- d) Consistent with applicable law (including regulations); and

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e) Subject to the limitations imposed in Sections 302 and 303 of this Act.

SEC. 103. MANAGEMENT OF REVERSE FLOW UNDER THE SMELT BIOLOGICAL OPINION

(a) In implementing the provisions of the smelt biological opinion, or any successor biological opinion, pertaining to management of reverse flow in the Old and Middle Rivers, the Secretary shall not restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers that is less negative than the highest negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 absent a determination based on current scientific data that a less negative reverse flow rate is reasonably required to avoid adverse impacts beyond those considered under the smelt biological opinion.

(b) Any determination to restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers less negative than the highest negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 shall be explained in writing, including an explanation of the data examined and the connection between those data and the choice made, and promptly posted on the Fish and Wildlife Service website.

SEC. 104. INFLOW / EXPORT RATIO FOR VOLUNTARY TRANSFERS

- a) The Secretaries shall, in a timely manner, evaluate any proposal to increase flow in the San Joaquin River through a voluntary sale, transfer, or exchange of water from an agency with rights to divert water from the San Joaquin River or its tributaries and shall adopt a 1:1 inflow to export ratio for the increment of increased flow, as measured as a 3-day running average at Vernalis during the period from April 1 through May 31, that results from the voluntary sale, transfer, or exchange unless the Secretaries demonstrate that a 1:1 inflow to export ratio for that increment of increased flow will cause adverse impacts on species listed under the salmonid biological opinion beyond those considered under the biological opinion.
- b) Any individual sale, transfer, or exchange using a 1:1 inflow to export ratio adopted under the authority of this section may only proceed if
 - (1) the Secretary of the Interior determines that the environmental effects of the proposed sale, transfer, or exchange are consistent with effects permissible under applicable law (including regulations);
 - (2) Delta conditions are suitable to allow movement of the acquired, transferred, or exchanged water through the Delta consistent with the Central Valley Project's and the State Water Project's permitted water rights; and

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- (3) such voluntary sale, transfer or exchange of water results in flow that is in addition to flow that otherwise would occur in the absence of the voluntary sale, transfer or exchange.

SEC. 105. OTHER EMERGENCY PROJECTS

(a) In General- The applicable Secretary shall--

(1) authorize and implement actions to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using the best available science and findings from the United States Geological Survey on diurnal behavior of juvenile salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits, consistent with the California Endangered Species Act and operational criteria and monitoring set forth in the California State Water Resources Control Board's Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions, effective January 31, 2014, or a successor order;

(2)(A) issue all necessary permit decisions under the authority of the Secretaries using the shortest practicable process provided under applicable law (including regulations) to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality
; and
; and
; and

(B) advise permit applicants described under Subparagraph (A) regarding the design of proposed temporary barriers or operations of gates that would not trigger formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536);

(3) complete all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on water transfer requests associated with voluntarily fallowing nonpermanent crops in the State, using the shortest practicable process provided under applicable law (including regulations);

(4) subject to the limitations on maximum transfer amounts, allow the period for exports for transfers to include October 1 through November 15, if the following conditions are met:

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(A) the Secretary of the Interior determines that the environmental effects of the export of transfers are consistent with effects permissible under applicable law (including regulations);

(B) Delta conditions are suitable to allow the export for transfers consistent with conditions imposed by Central Valley Project and the State Water Project water right permits or licenses; and

C) the transfer will not violate any Federal or State law and will have no significant adverse effect on the Secretary's ability to deliver water pursuant to Central Valley Project contractual obligations or fish and wildlife obligations under the Central Valley Project Improvement Act, Pub. Law 102-575, Stat. 106 Stat. 4707, or the Department of Water Resources' ability to deliver water pursuant to State Water Project contractual obligations because of limitations in conveyance or pumping capacity.

(5) allow any North of Delta agricultural water service or refuge service contractor with unused Central Valley Project water to take delivery of such unused water through April 15, of the contract year immediately following the contract year in which such water was allocated, if--

(A) the contractor requests the extension; and

(B) the requesting contractor certifies that, without the extension, the contractor would have insufficient supplies to adequately meet water delivery obligations; and

(6) in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, and in coordination and in conjunction with non-federal entities, create partnerships to implement instream and offsite projects in the Delta and upstream in the Sacramento River and San Joaquin basins, to include important side channel, riparian, inter-tidal, and floodplain habitats for fish reproduction and rearing; fish screens; and operational and other habitat improvements, that increase the amount of usable water supplies for multiple purposes and that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to actions taken under this Act.

(b) Accelerated Project Decision and Elevation-

(1) IN GENERAL- Upon the request of the Governor, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions relating to a project or operation to provide additional water supplies or address emergency drought conditions pursuant to subsection (a) and section 102, including but not limited to water transfers and the placement of temporary rock barriers.

(2) REQUEST FOR RESOLUTION-

(A) IN GENERAL- Upon the request of the Governor, the Secretary of Commerce, or the head of another Federal agency responsible for carrying

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out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide emergency water supplies.

(B) MEETING- The Secretary of the Interior shall convene a meeting requested under subparagraph (A) not later than 7 days after receiving the meeting request.

(3) NOTIFICATION- Upon receipt of a request for a meeting under this subsection, the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including the project to be reviewed and the date for the meeting.

(4) DECISION- Not later than 10 days after the date on which a meeting is requested under paragraph (2), the head of the relevant Federal agency shall issue a final decision on the project in writing.

(5) MEETING CONVENED BY SECRETARY- The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

SEC. 106. TEMPORARY OPERATIONAL FLEXIBILITY DURING PERIODS OF HIGH OUTFLOW.

(b) Days of high outflow. - Subsection (a) is in effect on any day or days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey. [checking with BOR if this is the appropriate threshold]

(c) Compliance With ESA Authorizations.- In carrying out this section, the Secretaries may continue to impose any requirements under the smelt and salmonid biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid additional adverse effects on a listed species beyond the range of those authorized under the smelt and salmonid biological opinions.

(d) Other Environmental Protections.-

(1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law, including State Water Resources Control Board Decision 1641, as it may be implemented in any given year.

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(2) During the first flush of sediment out of the Delta I need more technical definition in each water year, and provided that such determination is based upon objective evidence, OMR flow may be managed at rates less negative than the highest negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 for a minimum duration to avoid movement of adult Delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants.

(3) This section shall not affect the application of the salmonid biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those authorized under the Endangered Species Act of 1973. In addition to any other actions to benefit water supply, the Secretary and the Secretary of Commerce shall consider allowing through-Delta water transfers to occur during this period.

(4) During operations under this section, the Secretary of the Interior, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to ensure incidental take levels are not exceeded, and to identify potential negative impacts, if any, and actions necessary to avoid or mitigate impacts of the temporary operational flexibility to species listed under the Endangered Species Act of 1973.

(5) During operations under this section, the Secretaries shall confer with the Director of the California Department of Fish and Wildlife regarding the potential impacts to species listed under the California Endangered Species Act that are not listed under the Endangered Species Act 1973.

(e) Authority.— The Secretaries' actions under this section are authorized by:

- (1) The flexibility in the smelt and salmon biological opinions;
- (2) The emergency consultation provisions of the Endangered Species Act of 1973 and its implementing regulation at section 402.05, title 50, Code of Federal Regulations; and
- (3) This Act.

(f) -Aftermath-

At the conclusion of the informal consultation under this section, the Secretary of At the conclusion of the informal consultation under this section, the Secretary of At the conclusion of the informal consultation under this section, the Secretary of At the conclusion of the informal consultation under this section, the Secretary of

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SEC. 107. CALENDAR-BASED TRIGGERS.

Notwithstanding any calendar based trigger described in the salmonid biological opinion Reasonable and Prudent Alternative, operations of the Central Valley Project and the State Water Project shall not be limited by the Reasonable and Prudent Alternative unless current monitoring data indicate that the actions described in the Reasonable and Prudent Alternative are reasonably required to avoid the impacts identified by the salmonid biological opinion.

SEC. 108. PROGRESS REPORT.

Ninety days after the date of the enactment of this Act and every 90 days thereafter, the Secretaries shall provide a progress report describing the implementation of sections 102 and 103 to the Committee on Natural Resources in the House of Representatives and the Committee on Energy and Natural Resources in the Senate.

SEC. 109. STATUS OF SURFACE STORAGE STUDIES.

One year after the date of the enactment of this Act, the Secretary of the Interior shall provide a progress report on the status of feasibility studies undertaken pursuant to clauses (i) and (ii) of section 103(d)(1)(A) of the Water Supply, Reliability, and Environmental Improvement Act (Public Law 108-361) to the Committee on Natural Resources in the House of Representatives and the Committee on Energy and Natural Resources in the Senate. The report shall include timelines for study completion, draft environmental impact statements, final environmental impact statements, and Records of Decision.

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TITLE II—ACTIONS TO BENEFIT FISH AND REFUGES

SEC. 201. ACTIONS TO BENEFIT ENDANGERED FISH POPULATIONS.

The Secretary of the Interior, in consultation with the Secretary of Commerce, shall implement the following actions to increase protections of fish listed under the smelt and salmon biological opinions:

- a) **Electronic Blocking Barrier at the Delta Cross Channel Gates** – In coordination with the State Water Resources Control Board and the California Department of Fish and Wildlife:

- (1) report to Congress within 90 days of enactment of this Act on the current progress of evaluating electronic blocking barriers at Deadhorse Island to prevent straying of endangered salmonids through the Delta Cross Channel Gates; and
- (2) report to Congress within 1 year of enactment of this Act on the effectiveness of such electronic blocking barriers in preventing straying of endangered salmonids.

- b) **Gravel and Rearing Area Additions to the Upper Sacramento River** –

- (1) In coordination with the California Department of Fish and Wildlife, provide within 180 days of enactment of this Act:

- a. a report on the cost and effectiveness of additional gravel that were placed downstream of the Keswick Dam in 2013 and 2014 in improving salmon spawning rates; and
- b. a report on the feasibility of implementing gravel additions at additional locations to improve salmon spawning rates, and the timetable for implementing any approved locations;
- c. a report on the feasibility of constructing or restoring additional natural rearing areas in the upper mainstem Sacramento River to improve salmon population recovery.

- (2) If the feasibility reports in Paragraph (1) determine that additions of gravel and natural rearing areas are feasible and beneficial for protecting and recovering fish populations, begin implementation of those additions within 1 year of the issuance of the feasibility reports.

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- c) **Alternative Hatchery Salmon Release Strategies** – The Secretary of the Interior, in consultation with the Secretary of Commerce, shall:
 - (1) Establish pilot programs that would test alternative release strategies for hatchery-raised winter-run salmon to reduce mortality rates beyond those experienced currently, including alternative release locations, trucking options, or barging options.
 - (2) Within 3 years of enactment of this Act, and annually thereafter, report to Congress on the progress and results of the pilot programs established in Paragraph (1), and provide recommendations on whether those pilot programs should be continued.
- d) **Reduce Predator Habitat** – within 2 years of enactment of this Act, implement a pilot program to:
 - (1) Identify natural and artificial factors in the Sacramento River and the Sacramento-San Joaquin River Delta watershed that could be providing favorable predatory fish habitat for fish that prey on juvenile salmon;
 - (2) Collect scientific data at those locations to determine if those natural or artificial factors are contributing to predation of endangered fish; and
 - (3) Provide recommendations on whether those natural or artificial factors that enable the formation or continuation of predatory fish habitat could be feasibly and effectively modified, in compliance with all applicable state and federal laws and regulations, to reduce predation.
- e) **Eliminate / Reduce Lighting at In-River Structures** – In consultation with the California Department of Fish and Wildlife and other relevant local and state authorities:
 - (1) Assess the effectiveness of lowering light intensity at artificial structures in the Sacramento-San Joaquin River Delta to reduce predation of endangered fish; and
 - (2) Implement actions to lower light intensity at other artificial structures in the Delta if the assessment in Paragraph (1) determines that the action is effective in reducing predation.
- f) **Evaluate and Improve Delta Pump Fish Salvage System** – In consultation with the U.S. Fish & Wildlife Service, the National Marine Fisheries Service, and the California Department of Fish and Wildlife:
 - (1) evaluate and report to Congress within 1 year of enactment of this Act on alternatives to re-deposit salvaged salmon smolts and other fish from the Delta that would reduce predation losses, and to reduce predation at the existing fish salvage system.

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(2) upon identification of feasible alternatives, implement those alternatives within 2 years of issuance of the report in paragraph (1).

g) **Reduce Predator Habitat at the Tracy Fish Facility –**

(1) Provide within 180 days of enactment of this Act a report on the Bureau of Reclamation's evaluation of an electronic crowder system to remove and relocate predators of endangered fish from the vicinity of the Tracy Fish Facility, including a recommendation on whether the system can be feasibly installed and implemented.

(2) If the report in Paragraph (1) finds that the system is feasible, implement the system within 2 years of issuance of the report.

h) **Trap and Barge Pilot Project to Increase Survival Through the Delta –** The Assistant Administrator and the Commissioner shall, in collaboration with the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife, water agencies, and other interested parties, design, permit, implement and evaluate a pilot program to test the efficacy of an experimental trap and barge program to improve survival of juvenile salmonids emigrating from the San Joaquin watershed through the Delta, as further described below.

(1) Within 30 days of enactment, the Assistant Administrator and the Commissioner shall convene a working group of the relevant agencies and other interested parties through which to develop and execute a plan for the design, budgeting, implementation and evaluation of such a pilot program, utilizing existing expertise on such trap and barge programs as may be available. Such plan shall detail a schedule and budget for the program, and identify the responsible parties for each element of the program.

(2) The Assistant Administrator and the Commissioner shall provide an opportunity for 30 days of public review and comment on the pilot program and also simultaneously seek an expeditious independent peer review of the program to improve its rigor and likelihood of success.

(3) Within 60 days of completion of (2), above, the Assistant Administrator and the Commissioner shall complete the necessary design and evaluations of the pilot program and seek such permits or other regulatory authorizations as may be required under federal law for its prompt implementation and evaluation by the Assistant Administrator, the Commissioner or such other parties as they determine most suitable.

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(4) The Assistant Administrator and the Commissioner shall seek to commence implementation of the pilot program in 2016 or as soon thereafter as is possible, and shall conduct such pilot for such period of time as needed to evaluate the efficacy of the program to improve survivals across a range of environmental conditions.

(5) The Assistant Administrator and the Commissioner shall jointly report annually to the Senate Committees on the Environment and Public Works and Energy and Natural Resources and the House Committee on Natural Resources their progress in implementing this section, estimated survival rates through the Delta for both juvenile salmonids that were barged through the Delta and those that were not barged, and if survival rates are significantly higher for barged fish as compared to other outmigrating smolts, the Assistant Administrator's and Commissioner's recommendations regarding broadening the pilot program and any relevant recommendations pursuant to section 203.

SEC. 202. PILOT PROGRAM TO PROTECT NATIVE ANADRAMOUS FISH IN THE STANISLAUS RIVER.

(a) Establishment of Non-native Predator Fish Removal Program- The Assistant Administrator and districts, in consultation with the United States Fish and Wildlife Service and the California Department of Fish and Wildlife, shall jointly develop and conduct a pilot non-native predator fish removal program to remove non-native striped bass, smallmouth bass, largemouth bass, black bass, and other non-native predator fishes from the Stanislaus River. The pilot program shall--

- (1) be scientifically based;
- (2) include methods to quantify the number and size of predator fishes removed each year, the impact of such removal on the overall abundance of predator fishes, and the impact of such removal on the populations of juvenile anadromous fish found in the Stanislaus River by, among other things, evaluating the number of juvenile anadromous fish that migrate past the rotary screw trap located at Caswell;
- (3) among other methods, use wire fyke trapping, portable resistance board weirs, and boat electrofishing, which are among the most effective predator collection techniques that minimize effects to native anadromous fish;
- (4) be developed, including the application for all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), for the performance of the pilot program, not later than 6 months after the date of the enactment of this Act; and
- (5) be implemented as quickly as possible following the issuance of all necessary scientific research and species enhancement permits needed to begin the pilot program.

(b) Management- The management of the pilot program shall be the joint responsibility of the Assistant Administrator and the districts. Such parties shall work collaboratively to ensure the performance of the pilot program, and shall discuss and agree upon, among other things, changes in the structure, management, personnel, techniques, strategy, data collection, reporting and conduct of the pilot program.

(c) Conduct-

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- (1) IN GENERAL- By agreement between the Assistant Administrator and the participating districts, the pilot program may be conducted by their own personnel, qualified private contractors hired by the districts, personnel of, on loan to, or otherwise assigned to NOAA Fisheries, or a combination thereof.
- (2) PARTICIPATION BY NOAA FISHERIES- In the event the districts elect to conduct the program using their own personnel or qualified private contractors hired by them, the Assistant Administrator has the option to assign an employee of, on loan to, or otherwise assigned to NOAA Fisheries, to be present for all activities performed in the field. Such presence shall ensure compliance with the agreed upon elements specified in subsection (b). The districts shall pay 100 percent of the cost of such participation as specified in subsection (d).

- (3) TIMING OF ELECTION- The districts shall notify the Assistant Administrator of their election on or before October 15 of each calendar year of the pilot program, which election shall apply to the work performed in the subsequent calendar year.

(d) Funding-

- (1) CONTRIBUTED FUNDS- The Assistant Administrator is authorized to receive and expend contributed funds for the purposes for which the funds contributed in a like manner as if said sums had been specifically appropriated for said purposes.
- (2) ANNUAL FUNDING- The districts shall be responsible through contributed funds for 100 percent of the cost of the pilot program. On or before December 1 of each year of the pilot program, the Assistant Administrator shall submit to the districts an estimate of the cost to be incurred by the NOAA Fisheries in the following calendar year, if any, including the cost of any data collection and posting under subsection (e). If an amount equal to the estimate is not provided through contributed funds, or any other fund as directed by the Assistant Administrator, by the districts on or before December 31 of each year,
 - (A) the NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled, and
 - (B) the districts shall be prohibited from conducting any aspect of the pilot program, until full payment is made by the districts.
- (3) ACCOUNTING- On or before September 1 of each calendar year, the Assistant Administrator shall provide an accounting of the prior calendar year's expenses to the districts. If the estimate paid by the districts was less than the actual costs incurred by the NOAA Fisheries, the districts shall have until September 30 of that calendar year to pay the difference to the fund identified by the Assistant Administrator in subsection (d)(1), or NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled. If the estimate paid by the districts was greater than the actual costs incurred by the NOAA Fisheries, then a credit shall be provided to the districts, which shall be deducted from the estimate payment the districts must make for the work performed by the NOAA Fisheries, if any, in the next calendar year.

(e) Reporting and Evaluation-

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(1) IN GENERAL- On or before the 15th day of each month, the Assistant Administrator shall post on the website of the NOAA Fisheries a tabular summary of the raw data collected in the prior month.

(2) REPORT- On or before June 30 of the calendar year following the completion of the program, the Assistant Administrator and districts shall jointly submit a report for peer review that--

- (A) discusses the findings and conclusions of the pilot program;
- (B) synthesizes the data collected under paragraph (1); and
- (C) makes recommendations for further study and action.

(f) Permits Process-

(1) Not later than 180 days after filing of an application, the Assistant Administrator and the districts, the Secretary of the Interior, the Secretary of Commerce, or both, as appropriate, shall issue all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act (16 U.S.C. 1539(a)(1)), for the performance of the pilot program.

(2) All permits issued shall be in the name of the NOAA Fisheries and the districts.

(3) Districts may delegate the authority to administer the permit authority to any qualified private contractor retained in accordance with subsection (c).

(4) The pilot program, including amendments thereto by the appropriate Federal and State agencies, shall be designed to meet the requirements of a conservation plan that complies with the requirements of Section 10(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(2)).

(g) Emergency Environmental Reviews – To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with Section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this section.

(h) Definitions- For the purposes of this section:

(1) ASSISTANT ADMINISTRATOR- The term 'Assistant Administrator' means the Assistant Administrator of National Oceanic and Atmospheric Administration, NOAA Fisheries

(2) DISTRICTS- The term 'districts' means the Oakdale Irrigation District and the South San Joaquin Irrigation District.

(3) PILOT PROGRAM- The term 'program' means the pilot non-native predator removal program established under this section.

SEC. 203. CALFED INVASIVE SPECIES PILOT PROJECTS IN THE

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SACRAMENTO-SAN JOAQUIN BAY DELTA AND ITS TRIBUTARIES.

(a) FINDINGS.—Congress finds that—

- (1) The Sacramento-San Joaquin Bay Delta and its Tributaries—
 - (A) is one of the largest and most diverse estuaries in the United States,
 - (B) is a natural treasure and a vital link in California's water system, and
 - (C) has native biodiversity important to the ecological and economic systems of California, including water deliveries to agriculture, municipalities and to the environment and fisheries industries, and
 - (D) has river tributaries important for rearing of salmon and steelhead smolts which experience a high level of predation from non-native species.
- (2) Past, present and future introductions of invasive species are and will be a major factor in the decline of native pelagic and anadromous endangered or threatened species in the Sacramento-San Joaquin Bay Delta and its tributaries.
- (3) More than 250 nonnative aquatic and plant species have been introduced into the Delta and its tributaries; of these, at least 185 species have become established and have altered the Sacramento-San Joaquin Bay Delta watershed's ecosystem.
- (4) The Bay Delta Conservation Plan, the Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-run Chinook Salmon and Central Valley Spring-run Chinook Salmon and the Distinct Population Segment of the Central Valley Steelhead, the Recovery Plan for the Sacramento-San Joaquin Delta Native Fishes, and the multiple 5 year reviews of those plans all highlight that introduced nonnative invasive species are a significant factor in the decline of native fish species. These nonnative species, which include invasive aquatic vegetation, predators, and competitors, directly or indirectly cause biological stress for pelagic and anadromous endangered or threatened fish species in the Sacramento-San Joaquin Bay-Delta and its tributaries.
- (5) If threats by nonnative species to native fish species are not addressed, there is a probability that native species of the Sacramento-San Joaquin Bay-Delta watershed's pelagic and anadromous community will go extinct.
- (6) The CALFED legislation (Public Law 108-361) authorized a program to prevent, control, and eradicate invasive species, but it has not been implemented to date.
- (7) A focused pilot program needs to be conducted within the Delta and river tributaries to reduce threats to native listed species by nonnative species. Reducing nonnative stressors on native listed species will contribute to both native listed species recovery and lowering the impact on downstream water users as those native listed species recover.

(b) PILOT PROJECTS TO IMPLEMENT CALFED INVASIVE SPECIES PROGRAM.

- (1) Not later than January 1, 2017, the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall begin pilot projects to implement the invasive species program, including prevention,

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control and eradication authorized pursuant to Section 103(d)(6)(A)(iv) of Public Law 108-361. The pilot projects shall:

(A) seek to reduce invasive aquatic vegetation, predators, and other competitors which are major factors in the decline of native listed pelagic and anadromous species that occupy the Sacramento and San Joaquin Rivers and their tributaries and the Sacramento-San Joaquin Bay-Delta; and

(B) address how to remove, reduce, or control the effects of species including: Asiatic clams, silversides, gobies, Brazilian water weed, largemouth bass, smallmouth bass, striped bass, crappie, bluegill, white and channel catfish, and brown bullheads.

(2) The Secretary of the Interior's efforts, in consultation with the Secretary of Commerce, shall consist of the following phases:

(A) Phase 1. The Secretary of the Interior shall convene a panel of experts, including experts recommended by the State of California, to:

- (i) Identify the non-native species having the greatest impact on the viability of native pelagic and anadromous native listed species; and
- (ii) Identify the non-native species for which actions to reduce or control the population is determined to be possible; and
- (iii) Design a study to reduce the non-native species identified in clauses (i) and (ii) and prepare a cost estimate to implement this study.

(B) Phase 2. The Secretary of the Interior, in consultation with the Secretary of Commerce, shall test the general viability of nonnative reduction methods, including either direct predator removal or alteration of channel conditions, or some combination thereof, through pilot projects at multiple sites in addition to the projects on the Stanislaus River pursuant to Section 202, including known hotspots of predator aggregation or activity, such as:

- (i) Clifton Court Forebay,
- (ii) Central Valley Project intakes,
- (iii) Head of Old River,
- (iv) Georgiana Slough,
- (v) Old and Middle Rivers,
- (vi) Franks Tract,
- (vii) Paintersville Bridge,
- (viii) individual river tributaries important for wild populations of anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,
- (ix) Human-made submerged structures, and
- (x) Salvage release sites.

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(C) Phase 3. If the Secretary of the Interior determines that the pilot projects as a group are effective, the Secretary and the Secretary of Commerce shall implement nonnative reduction methods at a larger number of sites, incorporating information learned during the first and second phase.

(3) The Secretary of the Interior shall collect data associated with the implementation of the projects above, and shall specifically collect data on the impact on

- (A) pelagic and anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,
- (B) water quality, and
- (C) water supply.

(4) After assessing the data described in subparagraph (2), the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall, if appropriate, annually recommend revisions to the reasonable and prudent alternatives contained in the salmonid biological opinion and the smelt biological opinion, or other administrative federal requirements governing the operation of the Central Valley Project and the State Water Project, that are likely to produce additional fishery, water quality, and water supply benefits.

(c) EMERGENCY ENVIRONMENTAL REVIEWS. To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this program.

SEC. 204. ACTIONS TO BENEFIT REFUGES.

In fiscal year 2015-2016 and in any successive year when there is a declaration of drought emergency by the Governor of California, in addition to funding under section 3407 of the Central Valley Project Improvement Act (106 Stat. 4706), there is authorized to be appropriated to the Secretary \$2 million for the acceleration and completion of water infrastructure and conveyance facilities necessary to achieve full water deliveries to Central Valley wildlife refuges and habitat areas pursuant to section 3406(d) of that Act.

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TITLE III—PROTECTION OF THIRD-PARTY WATER RIGHTS

SEC. 301. OFFSET FOR STATE WATER PROJECT

(a) Implementation Impacts- The Secretary of the Interior shall confer with the California Department of Fish and Wildlife in connection with the implementation of this Act on potential impacts to any consistency determination for operations of the State Water Project issued pursuant to California Fish and Game Code section 2080.1.

(b) Additional Yield- If, as a result of the application of this Act, the California Department of Fish and Wildlife

(c) Notification Related to Environmental Protections- The Secretary of the Interior shall notify the Director of the California Department of Fish and Wildlife regarding any changes in the manner in which reasonable and prudent alternatives related to the smelt biological opinion or the salmonid biological opinion are implemented and shall confirm that the changes maintain an appropriate level of protection for the species covered by the opinions.

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SEC. 302. AREA OF ORIGIN PROTECTIONS.

- (a) In General- Nothing in this Act shall diminish, impair, or otherwise affect in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections, including, but not limited to, rights to water appropriated prior to December 19, 1914, provided under California law. This Act does not limit or otherwise affect the application of California Water Code Sections 10505, 10505.5, 11128, 11460, and 11463, and Sections 12200 to 12220, inclusive.
- (b) Contracts- With respect to individuals and entities with water rights on the Sacramento River, the mandates of this section may be met, in whole or in part, through a contract with the Secretary executed pursuant to section 14 of Public Law 76-260; 53 Stat. 1187 (43 U.S.C. 389) that is in conformance with the Sacramento River Settlement Contracts renewed by the Secretary in 2005.

SEC. 303. NO REDIRECTED ADVERSE IMPACTS.

The Secretary of the Interior and the Secretary of Commerce shall ensure that actions taken to implement this Act do not -- result in the involuntary reduction of water supply to individuals or districts do not -- result in the involuntary reduction of water supply to individuals or districts do not --

SEC. 304. ALLOCATIONS FOR SACRAMENTO VALLEY WATER
SEC. 304. ALLOCATIONS FOR SACRAMENTO VALLEY WATER

(a) Allocations

- (1) IN GENERAL- Subject to paragraph (2) and subsection (b), the Secretary of the Interior shall make every reasonable effort in the operation of the Central Valley Project, to allocate water provided for irrigation purposes to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed in compliance with the following:
- (A) Not less than 100 percent of their contract quantities in a 'Wet' year.
(B) Not less than 100 percent of their contract quantities in an 'Above Normal' year.

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- (C) Not less than 100 percent of their contract quantities in a `Below Normal' year that is preceded by an `Above Normal' or a `Wet' year.
 - (D) Not less than 50 percent of their contract quantities in a `Dry' year that is preceded by a `Below Normal,' an `Above Normal,' or a `Wet' year.
 - (E) In all other years not identified herein, not less than twice the allocation percentage to south-of-Delta Central Valley Project agricultural water service contractors, up to 100 percent; provided, that nothing herein shall preclude an allocation to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed that is greater than twice the allocation percentage to South-of-Delta Central Valley Project agricultural water service contractors.
- (2) CONDITIONS- The Secretary's actions under paragraph (a) shall be subject to--
- (A) the priority of individuals or entities with Sacramento River water rights, including those with Sacramento River Settlement Contracts, that have priority to the diversion and use of Sacramento River water over water rights held by the United States for operations of the Central Valley Project;
 - (B) the United States obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors; and
 - (C) the Secretary's obligation to make water available to managed wetlands pursuant to section 3406(d) of the Central Valley Project Improvement Act (Public Law 102-575).

(b) Protection of Municipal and Industrial Supplies- Nothing in subsection (a) shall be deemed to--

- (1) modify any provision of a water service contract that addresses municipal and industrial water shortage policies of the Secretary;
- (2) affect or limit the authority of the Secretary to adopt or modify municipal and industrial water shortage policies; or
- (3) affect or limit the authority of the Secretary to implement municipal and industrial water shortage policies.

Neither subsection (a) nor the Secretary's implementation of subsection (a) shall constrain, govern or affect, directly or indirectly, the operations of the Central Valley Project's American River Division or any deliveries from that Division, its units or its facilities.

(c) Allocations made pursuant to subsection (a) shall not affect allocations to Central Valley Project municipal and industrial water service contractors by either increasing or decreasing allocations to such contractors compared to allocations such contractors would have received absent subsection (a).

(d) No Effect on Allocations- This section shall not--

- (1) affect the allocation of water to Friant Division contractors; or
- (2) result in the involuntary reduction in contract water allocations to individuals or entities with contracts to receive water from the Friant Division.

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(e) Program for Water Rescheduling- The Secretary shall direct that the United States Bureau of Reclamation develop and implement a program to provide for the opportunity for existing Central Valley Project agricultural water service and refuge service contractors within the Sacramento River Watershed to reschedule water, provided for under their Central Valley Project contracts, from one year to the next provided, that the rescheduling of water by such contractors shall not interfere with Central Valley Project operations or diminish the Project's ability to meet its contract obligations.

(f) Definitions- In this section:

- (1) The term “existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed” means water service contractors within the Shasta, Trinity, and Sacramento River Divisions of the Central Valley Project, that have a water service contract in effect, on the date of the enactment of this section, that provides water for irrigation.
- (2) The year type terms used in subsection (a) have the meaning given those year types in the Sacramento Valley Water Year Type (40-30-30) Index.

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TITLE IV--MISCELLANEOUS PROVISIONS

SEC. 401. EFFECT ON EXISTING OBLIGATIONS.

Nothing in this Act

(a) shall be deemed to authorize the Secretaries or any other Federal official to take any action or actions that either

(1) are likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, consistent with section 7 of the Endangered Species Act, 16 U.S.C. 1536; or

(1)(2) would cause additional adverse effects on listed species beyond those considered under the smelt and salmonid biological opinions;

(b) preempts or modifies any obligation of the United States under Federal reclamation law to operate the Central Valley Project in conformity with State law; or

(c) affects or modifies any existing obligation under the Central Valley Project Improvement Act (title 34 of Public Law 102-575).

SEC. 402. LEVEL OF DETAILED REQUIRED FOR ANALYSIS.

In articulating the determinations required under this Act, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the time frame permitted for timely decision-making in response to changing conditions in the Delta.

SEC. 403. TERMINATION OF AUTHORITIES.

This Act shall expire on September 30, 2017, or the date on which the Governor of the State suspends the state of drought emergency declaration, whichever is later.

From: Bernhardt, David L.
Sent: Wednesday, April 22, 2015 12:08 PM
To: 'Watts, John (Feinstein)'; Tom Birmingham
Subject: RE: Current confidential language
Attachments: bill 4-22-15b (4)dlbredlines (12156761-1).DOCX

John: My suggestions are in green highlight and redline. There were minor tweaks to: 104, 106(c) and (d) and 401, based on the call.

Best,
David

From: Watts, John (Feinstein) [mailto:John_Watts@feinstein.senate.gov]
Sent: Wednesday, April 22, 2015 2:42 PM
To: Bernhardt, David L.; Tom Birmingham
Subject: Current confidential language

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S. _____

California Emergency Drought Relief Act of 2015

114th CONGRESS
1st Session

IN THE SENATE OF THE UNITED STATES

April ___, 2015

AN ACT

To provide short-term water supplies to drought-stricken California.

*Be it enacted by the Senate and House of Representatives of the United States of America
in Congress assembled,*

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

- (a) Short Title- This Act may be cited as the “California Emergency Drought Relief Act of 2015”.
- (b) Table of Contents- The table of contents for this Act is as follows:
Sec. 1. Short title; table of contents.

TITLE I--CALIFORNIA EMERGENCY DROUGHT RELIEF

- Sec. 101. Definitions.
- Sec. 102. Operations under biological opinions.
- Sec. 103. Management of reverse flow under the smelt biological opinion.
- Sec. 104. Inflow / Export ratio for voluntary transfers.
- Sec. 105. Other emergency projects.
- Sec. 106. Temporary operational flexibility during periods of high outflow.
- Sec. 107. Calendar-based triggers.
- Sec. 108. Progress report.
- Sec. 109. Status of surface storage studies.

TITLE II—ACTIONS TO BENEFIT FISH AND REFUGES

- Sec. 201. Actions to benefit endangered fish populations.
- Sec. 202. Pilot program to protect native anadromous fish in the Stanislaus River.
- Sec. 203. CALFED invasive species pilot projects in the Sacramento-San Joaquin Bay Delta and its tributaries.
- Sec. 204. Actions to benefit refuges.

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TITLE III--PROTECTION OF THIRD-PARTY WATER RIGHTS

- Sec. 301. Offset for State Water Project.
- Sec. 302. Area of origin protections.
- Sec. 303. No redirected adverse impacts.
- Sec. 304. Allocations for Sacramento Valley Water Service Contractors.

TITLE IV--MISCELLANEOUS PROVISIONS

- Sec. 401. Effect on existing obligations.
- Sec. 402. Level of detail required for analysis.
- Sec. 403. Termination of authorities.

TITLE I–CALIFORNIA EMERGENCY DROUGHT RELIEF

SEC. 101. DEFINITIONS.

In this title:

- (1) CENTRAL VALLEY PROJECT- The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (106 Stat. 4707).
- (2) DELTA- The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.
- (3) SALMONID BIOLOGICAL OPINION- The term “salmonid biological opinion” means the biological opinion issued by the National Marine Fisheries Service on June 4, 2009.
- (4) SECRETARIES- The term “Secretaries” means--
 - (A) the Secretary of Commerce; and
 - (B) the Secretary of the Interior.
- (5) SMELT BIOLOGICAL OPINION- The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008.
- (6) STATE- The term “State” means the State of California.
- (7) STATE WATER PROJECT- The term “State Water Project” means the water project described by California Water Code section 11550 et seq. and operated by the California Department of Water Resources.

SEC. 102. OPERATIONS UNDER BIOLOGICAL OPINIONS.

~~Operating within the existing smelt biological opinion and the salmonid biological opinion; based on information and experience gained since the adoption of those biological opinions (such as management and monitoring of turbidity to protect Delta smelt and water supplies simultaneously, and improved understanding of salmon migration behaviors); within the flexibility inherent in the Biological Opinions; consistent with applicable law (including regulations); and subject to the limitations imposed in Sections 302 and 303 of this Act; The Secretaries shall direct Central Valley project operations and allow State Water Project operations to provide the maximum supply of water possible under current hydrologic conditions;~~

- a) Operating within the existing smelt and salmonid biological opinions;
- b) Based on information and experience gained since the adoption of those biological opinions (such as management and monitoring of turbidity to protect Delta smelt and water supplies simultaneously, and improved understanding of salmon migration behaviors);
- c) Maximizing the flexibility in the biological opinions;

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- d) Consistent with applicable law (including regulations); and
- e) Subject to the limitations imposed in Sections 302 and 303 of this Act.

SEC. 103. MANAGEMENT OF REVERSE FLOW UNDER THE SMELT BIOLOGICAL OPINION

(a) In implementing the provisions of the smelt biological opinion, or any successor biological opinion, pertaining to management of reverse flow in the Old and Middle Rivers, the Secretary shall not restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers that is less negative than the highest negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 absent a determination based on current scientific data that a less negative reverse flow rate is reasonably required to avoid adverse impacts beyond those considered under the smelt biological opinion.

(b) Any determination to restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers less negative than the highest negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 shall be explained in writing, including an explanation of the data examined and the connection between those data and the choice made, and promptly posted on the Fish and Wildlife Service website.

SEC. 104. INFLOW / EXPORT RATIO FOR VOLUNTARY TRANSFERS

a) The Secretaries shall, in a timely manner, evaluate any proposal to increase flow in the San Joaquin River through a voluntary sale, transfer, or exchange of water from an agency with rights to divert water from the San Joaquin River or its tributaries and shall adopt a 1:1 inflow to export ratio for the increment of increased flow, as measured as a 3-day running average at Vernalis during the period from April 1 through May 31, that results from the voluntary sale, transfer, or exchange unless the Secretaries demonstrate that a 1:1 inflow to export ratio for that increment of increased flow will cause adverse impacts to the on-listed species listed under the salmonid biological opinion emigrating Central Valley steelhead in the lower San Joaquin River beyond those considered under the salmonid biological opinion.

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b) Any individual sale, transfer, or exchange using a 1:1 inflow to export ratio adopted under the authority of this section may only proceed if

- (1) the Secretary of the Interior determines that the environmental effects of the proposed sale, transfer, or exchange are consistent with effects permissible under applicable law (including regulations);
- (2) Delta conditions are suitable to allow movement of the acquired, transferred, or exchanged water through the Delta consistent with the Central Valley Project's and the State Water Project's permitted water rights; and

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- (3) such voluntary sale, transfer or exchange of water results in flow that is in addition to flow that otherwise would occur in the absence of the voluntary sale, transfer or exchange.

SEC. 105. OTHER EMERGENCY PROJECTS

(a) In General- The applicable Secretary shall--

(1) authorize and implement actions to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using the best available science and findings from the United States Geological Survey on diurnal behavior of juvenile salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits, consistent with the California Endangered Species Act and operational criteria and monitoring set forth in the California State Water Resources Control Board's Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions, effective January 31, 2014, or a successor order;

(2)(A) issue all necessary permit decisions under the authority of the Secretaries using the shortest practicable process provided under applicable law (including regulations) to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality ~~for Central Valley Project and State Water Project contractors and other water users, which barriers or gates should provide benefits for species protection and in Delta water user water quality~~; and

(B) advise permit applicants described under Subparagraph (A) regarding the design of proposed temporary barriers or operations of gates that would The barriers and gates to be considered under Subparagraph (A) shall be designed in a manner such that the effects of the project shall not trigger formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536);

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(3) complete all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on water transfer requests associated with voluntarily fallowing nonpermanent crops in the State, using the shortest practicable process provided under applicable law (including regulations);

(4) subject to the limitations on maximum transfer amounts, allow the period for exports for transfers to include October 1 through November 15, if the following conditions are met:

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(A) the Secretary of the Interior determines that the environmental effects of the export of transfers are consistent with effects permissible under applicable law (including regulations); ~~and~~

(B) Delta conditions are suitable to allow the export for transfers consistent with conditions imposed by Central Valley Project and the State Water Project water right permits or licenses; ~~and~~

C) the transfer will not violate any Federal or State law and will have no significant adverse effect on the Secretary's ability to deliver water pursuant to Central Valley Project contractual obligations or fish and wildlife obligations under the Central Valley Project Improvement Act, Pub. Law 102-575, Stat. 106 Stat. 4707, or the Department of Water Resources' ability to deliver water pursuant to State Water Project contractual obligations because of limitations in conveyance or pumping capacity.

(5) allow any North of Delta agricultural water service or refuge service contractor with unused Central Valley Project water to take delivery of such unused water through April 15, of the contract year immediately following the contract year in which such water was allocated, if--

- (A) the contractor requests the extension; and
- (B) the requesting contractor certifies that, without the extension, the contractor would have insufficient supplies to adequately meet water delivery obligations; and

(6) in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, and in coordination and in conjunction with non-federal entities, create partnerships to implement instream and offsite projects in the Delta and upstream in the Sacramento River and San Joaquin basins, to include important side channel, riparian, inter-tidal, and floodplain habitats for fish reproduction and rearing; fish screens; and operational and other habitat improvements, that increase the amount of usable water supplies for multiple purposes and that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to actions taken under this Act.

(b) Accelerated Project Decision and Elevation-

(1) IN GENERAL- Upon the request of the Governor, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions relating to a project or operation to provide additional water supplies or address emergency drought conditions pursuant to subsection (a) and section 102, including but not limited to water transfers and the placement of temporary rock barriers.

(2) REQUEST FOR RESOLUTION-

(A) IN GENERAL- Upon the request of the Governor, the Secretary of Commerce, or the head of another Federal agency responsible for carrying

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out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide emergency water supplies.

(B) MEETING- The Secretary of the Interior shall convene a meeting requested under subparagraph (A) not later than 7 days after receiving the meeting request.

(3) NOTIFICATION- Upon receipt of a request for a meeting under this subsection, the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including the project to be reviewed and the date for the meeting.

(4) DECISION- Not later than 10 days after the date on which a meeting is requested under paragraph (2), the head of the relevant Federal agency shall issue a final decision on the project in writing.

(5) MEETING CONVENED BY SECRETARY- The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

SEC. 106. TEMPORARY OPERATIONAL FLEXIBILITY DURING PERIODS OF HIGH OUTFLOW.

Option 1 for the text of this section:

(b) Days of high outflow. - Subsection (a) ~~shall be in effect~~ on any day or days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey. [checking with BOR if this is the appropriate threshold]

(c) Compliance With ESA Authorizations.- In carrying out this section, the Secretaries may continue to impose any requirements under the smelt and salmonid biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid additional adverse effects on a listed species beyond those considered under the smelt and salmonid biological opinions.

(d) Other Environmental Protections.-

(1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law, including State Water Resources Control Board Decision 1641, as it may be implemented in any given year.

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(2) During the first flush of sediment out of the Delta [need more technical definition] in each water year, and provided that such determination is based upon objective evidence, OMR flow may be managed at rates less negative than the highest negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 for a minimum duration to avoid movement of adult Delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants.

(3) This section shall not affect the application of the salmonid biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those considered under the Smelt and salmonid biological opinion authorized under the Endangered Species Act of 1973. In addition to any other actions to benefit water supply, the Secretary and the Secretary of Commerce shall consider allowing through-Delta water transfers to occur during this period.

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(4) During operations under this section, the Secretary of the Interior, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to ensure incidental take levels are not exceeded, and to identify potential negative impacts, if any, and actions necessary to avoid or mitigate impacts of the temporary operational flexibility to species listed under the Endangered Species Act of 1973.

(5) During operations under this section, the Secretaries shall confer with the Director of the California Department of Fish and Wildlife regarding the potential impacts to species listed under the California Endangered Species Act that are not listed under the Endangered Species Act 1973.

(e) Authority.— The Secretaries' actions under this section are authorized by:

- (1) The flexibility in the smelt and salmon biological opinions;
- (2) The emergency consultation provisions of the Endangered Species Act of 1973 and its implementing regulation at section 402.05, title 50, Code of Federal Regulations; and
- (3) This Act.

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(f) Emergency Consultation.-Aftermath.-

- (1) The Secretary of the Interior shall use the emergency consultation procedures under the Endangered Species Act of 1973 and its implementing regulation at section 402.05, title 50, Code of Federal Regulations, to temporarily adjust the operating criteria under the biological opinions.

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Option 2 for the text of this section:

SEC. 107. CALENDAR-BASED TRIGGERS.

Notwithstanding any calendar based trigger described in the salmonid biological opinion Reasonable and Prudent Alternative, operations of the Central Valley Project and the State Water Project shall not be limited by the Reasonable and Prudent Alternative unless current monitoring data indicate that the actions described in the Reasonable and Prudent Alternative are reasonably required to avoid the impacts identified by the salmonid biological opinion.

SEC. 108. PROGRESS REPORT.

Ninety days after the date of the enactment of this Act and every 90 days thereafter, the Secretaries shall provide a progress report describing the implementation of sections 102 and 103 to the Committee on Natural Resources in the House of Representatives and the Committee on Energy and Natural Resources in the Senate.

SEC. 109. STATUS OF SURFACE STORAGE STUDIES.

One year after the date of the enactment of this Act, the Secretary of the Interior shall provide a progress report on the status of feasibility studies undertaken pursuant to clauses (i) and (ii) of section 103(d)(1)(A) of the Water Supply, Reliability, and Environmental Improvement Act (Public Law 108-361) to the Committee on Natural Resources in the House of Representatives and the Committee on Energy and Natural Resources in the Senate. The report shall include timelines for study completion, draft environmental impact statements, final environmental impact statements, and Records of Decision.

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TITLE II—ACTIONS TO BENEFIT FISH AND REFUGES

SEC. 201. ACTIONS TO BENEFIT ENDANGERED FISH POPULATIONS.

The Secretary of the Interior, in consultation with the Secretary of Commerce, shall implement the following actions to increase protections of fish listed under the smelt and salmon biological opinions:

- a) **Electronic Blocking Barrier at the Delta Cross Channel Gates** – In coordination with the State Water Resources Control Board and the California Department of Fish and Wildlife:

- (1) report to Congress within 90 days of enactment of this Act on the current progress of evaluating electronic blocking barriers at Deadhorse Island to prevent straying of endangered salmonids through the Delta Cross Channel Gates; and
- (2) report to Congress within 1 year of enactment of this Act on the effectiveness of such electronic blocking barriers in preventing straying of endangered salmonids.

- b) **Gravel and Rearing Area Additions to the Upper Sacramento River** –

- (1) In coordination with the California Department of Fish and Wildlife, provide within 180 days of enactment of this Act:

- a. a report on the cost and effectiveness of additional gravel that were placed downstream of the Keswick Dam in 2013 and 2014 in improving salmon spawning rates; and
- b. a report on the feasibility of implementing gravel additions at additional locations to improve salmon spawning rates, and the timetable for implementing any approved locations;
- c. a report on the feasibility of constructing or restoring additional natural rearing areas in the upper mainstem Sacramento River to improve salmon population recovery.

- (2) If the feasibility reports in Paragraph (1) determine that additions of gravel and natural rearing areas are feasible and beneficial for protecting and recovering fish populations, begin implementation of those additions within 1 year of the issuance of the feasibility reports.

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- c) **Alternative Hatchery Salmon Release Strategies** – The Secretary of the Interior, in consultation with the Secretary of Commerce, shall:
 - (1) Establish pilot programs that would test alternative release strategies for hatchery-raised winter-run salmon to reduce mortality rates beyond those experienced currently, including alternative release locations, trucking options, or barging options.
 - (2) Within 3 years of enactment of this Act, and annually thereafter, report to Congress on the progress and results of the pilot programs established in Paragraph (1), and provide recommendations on whether those pilot programs should be continued.
- d) **Reduce Predator Habitat** – within 2 years of enactment of this Act, implement a pilot program to:
 - (1) Identify natural and artificial factors in the Sacramento River and the Sacramento-San Joaquin River Delta watershed that could be providing favorable predatory fish habitat for fish that prey on juvenile salmon;
 - (2) Collect scientific data at those locations to determine if those natural or artificial factors are contributing to predation of endangered fish; and
 - (3) Provide recommendations on whether those natural or artificial factors that enable the formation or continuation of predatory fish habitat could be feasibly and effectively modified, in compliance with all applicable state and federal laws and regulations, to reduce predation.
- e) **Eliminate / Reduce Lighting at In-River Structures** – In consultation with the California Department of Fish and Wildlife and other relevant local and state authorities:
 - (1) Assess the effectiveness of lowering light intensity at artificial structures in the Sacramento-San Joaquin River Delta to reduce predation of endangered fish; and
 - (2) Implement actions to lower light intensity at other artificial structures in the Delta if the assessment in Paragraph (1) determines that the action is effective in reducing predation.
- f) **Evaluate and Improve Delta Pump Fish Salvage System** – In consultation with the U.S. Fish & Wildlife Service, the National Marine Fisheries Service, and the California Department of Fish and Wildlife:
 - (1) evaluate and report to Congress within 1 year of enactment of this Act on alternatives to re-deposit salvaged salmon smolts and other fish from the Delta that would reduce predation losses, and to reduce predation at the existing fish salvage system.

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(2) upon identification of feasible alternatives, implement those alternatives within 2 years of issuance of the report in paragraph (1).

g) **Reduce Predator Habitat at the Tracy Fish Facility –**

(1) Provide within 180 days of enactment of this Act a report on the Bureau of Reclamation's evaluation of an electronic crowder system to remove and relocate predators of endangered fish from the vicinity of the Tracy Fish Facility, including a recommendation on whether the system can be feasibly installed and implemented.

(2) If the report in Paragraph (1) finds that the system is feasible, implement the system within 2 years of issuance of the report.

h) **Trap and Barge Pilot Project to Increase Survival Through the Delta –** The Assistant Administrator and the Commissioner shall, in collaboration with the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife, water agencies, and other interested parties, design, permit, implement and evaluate a pilot program to test the efficacy of an experimental trap and barge program to improve survival of juvenile salmonids emigrating from the San Joaquin watershed through the Delta, as further described below.

(1) Within 30 days of enactment, the Assistant Administrator and the Commissioner shall convene a working group of the relevant agencies and other interested parties through which to develop and execute a plan for the design, budgeting, implementation and evaluation of such a pilot program, utilizing existing expertise on such trap and barge programs as may be available. Such plan shall detail a schedule and budget for the program, and identify the responsible parties for each element of the program.

(2) The Assistant Administrator and the Commissioner shall provide an opportunity for 30 days of public review and comment on the pilot program and also simultaneously seek an expeditious independent peer review of the program to improve its rigor and likelihood of success.

(3) Within 60 days of completion of (2), above, the Assistant Administrator and the Commissioner shall complete the necessary design and evaluations of the pilot program and seek such permits or other regulatory authorizations as may be required under federal law for its prompt implementation and evaluation by the Assistant Administrator, the Commissioner or such other parties as they determine most suitable.

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(4) The Assistant Administrator and the Commissioner shall seek to commence implementation of the pilot program in 2016 or as soon thereafter as is possible, and shall conduct such pilot for such period of time as needed to evaluate the efficacy of the program to improve survivals across a range of environmental conditions.

(5) The Assistant Administrator and the Commissioner shall jointly report annually to the Senate Committees on the Environment and Public Works and Energy and Natural Resources and the House Committee on Natural Resources their progress in implementing this section, estimated survival rates through the Delta for both juvenile salmonids that were barged through the Delta and those that were not barged, and if survival rates are significantly higher for barged fish as compared to other outmigrating smolts, the Assistant Administrator's and Commissioner's recommendations regarding broadening the pilot program and any relevant recommendations pursuant to section 203.

SEC. 202. PILOT PROGRAM TO PROTECT NATIVE ANADRAMOUS FISH IN THE STANISLAUS RIVER.

(a) Establishment of Non-native Predator Fish Removal Program- The Assistant Administrator and districts, in consultation with the United States Fish and Wildlife Service and the California Department of Fish and Wildlife, shall jointly develop and conduct a pilot non-native predator fish removal program to remove non-native striped bass, smallmouth bass, largemouth bass, black bass, and other non-native predator fishes from the Stanislaus River. The pilot program shall--

- (1) be scientifically based;
- (2) include methods to quantify the number and size of predator fishes removed each year, the impact of such removal on the overall abundance of predator fishes, and the impact of such removal on the populations of juvenile anadromous fish found in the Stanislaus River by, among other things, evaluating the number of juvenile anadromous fish that migrate past the rotary screw trap located at Caswell;
- (3) among other methods, use wire fyke trapping, portable resistance board weirs, and boat electrofishing, which are among the most effective predator collection techniques that minimize effects to native anadromous fish;
- (4) be developed, including the application for all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), for the performance of the pilot program, not later than 6 months after the date of the enactment of this Act; and
- (5) be implemented as quickly as possible following the issuance of all necessary scientific research and species enhancement permits needed to begin the pilot program.

(b) Management- The management of the pilot program shall be the joint responsibility of the Assistant Administrator and the districts. Such parties shall work collaboratively to ensure the performance of the pilot program, and shall discuss and agree upon, among other things, changes in the structure, management, personnel, techniques, strategy, data collection, reporting and conduct of the pilot program.

(c) Conduct-

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(1) IN GENERAL- By agreement between the Assistant Administrator and the participating districts, the pilot program may be conducted by their own personnel, qualified private contractors hired by the districts, personnel of, on loan to, or otherwise assigned to NOAA Fisheries, or a combination thereof.

(2) PARTICIPATION BY NOAA FISHERIES- In the event the districts elect to conduct the program using their own personnel or qualified private contractors hired by them, the Assistant Administrator has the option to assign an employee of, on loan to, or otherwise assigned to NOAA Fisheries, to be present for all activities performed in the field. Such presence shall ensure compliance with the agreed upon elements specified in subsection (b). The districts shall pay 100 percent of the cost of such participation as specified in subsection (d).

(3) TIMING OF ELECTION- The districts shall notify the Assistant Administrator of their election on or before October 15 of each calendar year of the pilot program, which election shall apply to the work performed in the subsequent calendar year.

(d) Funding-

(1) CONTRIBUTED FUNDS- The Assistant Administrator is authorized to receive and expend contributed funds for the purposes for which the funds contributed in a like manner as if said sums had been specifically appropriated for said purposes.

(2) ANNUAL FUNDING- The districts shall be responsible through contributed funds for 100 percent of the cost of the pilot program. On or before December 1 of each year of the pilot program, the Assistant Administrator shall submit to the districts an estimate of the cost to be incurred by the NOAA Fisheries in the following calendar year, if any, including the cost of any data collection and posting under subsection (e). If an amount equal to the estimate is not provided through contributed funds, or any other fund as directed by the Assistant Administrator, by the districts on or before December 31 of each year,

(A) the NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled, and

(B) the districts shall be prohibited from conducting any aspect of the pilot program, until full payment is made by the districts.

(3) ACCOUNTING- On or before September 1 of each calendar year, the Assistant Administrator shall provide an accounting of the prior calendar year's expenses to the districts. If the estimate paid by the districts was less than the actual costs incurred by the NOAA Fisheries, the districts shall have until September 30 of that calendar year to pay the difference to the fund identified by the Assistant Administrator in subsection (d)(1), or NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled. If the estimate paid by the districts was greater than the actual costs incurred by the NOAA Fisheries, then a credit shall be provided to the districts, which shall be deducted from the estimate payment the districts must make for the work performed by the NOAA Fisheries, if any, in the next calendar year.

(e) Reporting and Evaluation-

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(1) IN GENERAL- On or before the 15th day of each month, the Assistant Administrator shall post on the website of the NOAA Fisheries a tabular summary of the raw data collected in the prior month.

(2) REPORT- On or before June 30 of the calendar year following the completion of the program, the Assistant Administrator and districts shall jointly submit a report for peer review that--

- (A) discusses the findings and conclusions of the pilot program;
- (B) synthesizes the data collected under paragraph (1); and
- (C) makes recommendations for further study and action.

(f) Permits Process-

(1) Not later than 180 days after filing of an application, the Assistant Administrator and the districts, the Secretary of the Interior, the Secretary of Commerce, or both, as appropriate, shall issue all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act (16 U.S.C. 1539(a)(1)), for the performance of the pilot program.

(2) All permits issued shall be in the name of the NOAA Fisheries and the districts.

(3) Districts may delegate the authority to administer the permit authority to any qualified private contractor retained in accordance with subsection (c).

(4) The pilot program, including amendments thereto by the appropriate Federal and State agencies, shall be designed to meet the requirements of a conservation plan that complies with the requirements of Section 10(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(2)).

(g) Emergency Environmental Reviews – To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with Section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this section.

(h) Definitions- For the purposes of this section:

(1) ASSISTANT ADMINISTRATOR- The term 'Assistant Administrator' means the Assistant Administrator of National Oceanic and Atmospheric Administration, NOAA Fisheries

(2) DISTRICTS- The term 'districts' means the Oakdale Irrigation District and the South San Joaquin Irrigation District.

(3) PILOT PROGRAM- The term 'program' means the pilot non-native predator removal program established under this section.

SEC. 203. CALFED INVASIVE SPECIES PILOT PROJECTS IN THE

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SACRAMENTO-SAN JOAQUIN BAY DELTA AND ITS TRIBUTARIES.

(a) FINDINGS.—Congress finds that—

- (1) The Sacramento-San Joaquin Bay Delta and its Tributaries—
 - (A) is one of the largest and most diverse estuaries in the United States,
 - (B) is a natural treasure and a vital link in California's water system, and
 - (C) has native biodiversity important to the ecological and economic systems of California, including water deliveries to agriculture, municipalities and to the environment and fisheries industries, and
 - (D) has river tributaries important for rearing of salmon and steelhead smolts which experience a high level of predation from non-native species.
- (2) Past, present and future introductions of invasive species are and will be a major factor in the decline of native pelagic and anadromous endangered or threatened species in the Sacramento-San Joaquin Bay Delta and its tributaries.
- (3) More than 250 nonnative aquatic and plant species have been introduced into the Delta and its tributaries; of these, at least 185 species have become established and have altered the Sacramento-San Joaquin Bay Delta watershed's ecosystem.
- (4) The Bay Delta Conservation Plan, the Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-run Chinook Salmon and Central Valley Spring-run Chinook Salmon and the Distinct Population Segment of the Central Valley Steelhead, the Recovery Plan for the Sacramento-San Joaquin Delta Native Fishes, and the multiple 5 year reviews of those plans all highlight that introduced nonnative invasive species are a significant factor in the decline of native fish species. These nonnative species, which include invasive aquatic vegetation, predators, and competitors, directly or indirectly cause biological stress for pelagic and anadromous endangered or threatened fish species in the Sacramento-San Joaquin Bay-Delta and its tributaries.
- (5) If threats by nonnative species to native fish species are not addressed, there is a probability that native species of the Sacramento-San Joaquin Bay-Delta watershed's pelagic and anadromous community will go extinct.
- (6) The CALFED legislation (Public Law 108-361) authorized a program to prevent, control, and eradicate invasive species, but it has not been implemented to date.
- (7) A focused pilot program needs to be conducted within the Delta and river tributaries to reduce threats to native listed species by nonnative species. Reducing nonnative stressors on native listed species will contribute to both native listed species recovery and lowering the impact on downstream water users as those native listed species recover.

(b) PILOT PROJECTS TO IMPLEMENT CALFED INVASIVE SPECIES PROGRAM.

- (1) Not later than January 1, 2017, the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall begin pilot projects to implement the invasive species program, including prevention,

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control and eradication authorized pursuant to Section 103(d)(6)(A)(iv) of Public Law 108-361. The pilot projects shall:

(A) seek to reduce invasive aquatic vegetation, predators, and other competitors which are major factors in the decline of native listed pelagic and anadromous species that occupy the Sacramento and San Joaquin Rivers and their tributaries and the Sacramento-San Joaquin Bay-Delta; and

(B) address how to remove, reduce, or control the effects of species including: Asiatic clams, silversides, gobies, Brazilian water weed, largemouth bass, smallmouth bass, striped bass, crappie, bluegill, white and channel catfish, and brown bullheads.

(2) The Secretary of the Interior's efforts, in consultation with the Secretary of Commerce, shall consist of the following phases:

(A) Phase 1. The Secretary of the Interior shall convene a panel of experts, including experts recommended by the State of California, to:

- (i) Identify the non-native species having the greatest impact on the viability of native pelagic and anadromous native listed species; and
- (ii) Identify the non-native species for which actions to reduce or control the population is determined to be possible; and
- (iii) Design a study to reduce the non-native species identified in clauses (i) and (ii) and prepare a cost estimate to implement this study.

(B) Phase 2. The Secretary of the Interior, in consultation with the Secretary of Commerce, shall test the general viability of nonnative reduction methods, including either direct predator removal or alteration of channel conditions, or some combination thereof, through pilot projects at multiple sites in addition to the projects on the Stanislaus River pursuant to Section 202, including known hotspots of predator aggregation or activity, such as:

- (i) Clifton Court Forebay,
- (ii) Central Valley Project intakes,
- (iii) Head of Old River,
- (iv) Georgiana Slough,
- (v) Old and Middle Rivers,
- (vi) Franks Tract,
- (vii) Paintersville Bridge,
- (viii) individual river tributaries important for wild populations of anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,
- (ix) Human-made submerged structures, and
- (x) Salvage release sites.

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(C) Phase 3. If the Secretary of the Interior determines that the pilot projects as a group are effective, the Secretary and the Secretary of Commerce shall implement nonnative reduction methods at a larger number of sites, incorporating information learned during the first and second phase.

(3) The Secretary of the Interior shall collect data associated with the implementation of the projects above, and shall specifically collect data on the impact on

- (A) pelagic and anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,
- (B) water quality, and
- (C) water supply.

(4) After assessing the data described in subparagraph (2), the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall, if appropriate, annually recommend revisions to the reasonable and prudent alternatives contained in the salmonid biological opinion and the smelt biological opinion, or other administrative federal requirements governing the operation of the Central Valley Project and the State Water Project, that are likely to produce additional fishery, water quality, and water supply benefits.

(c) EMERGENCY ENVIRONMENTAL REVIEWS. To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this program.

SEC. 204. ACTIONS TO BENEFIT REFUGES.

In fiscal year 2015-2016 and in any successive year when there is a declaration of drought emergency by the Governor of California, in addition to funding under section 3407 of the Central Valley Project Improvement Act (106 Stat. 4706), there is authorized to be appropriated to the Secretary \$2 million for the acceleration and completion of water infrastructure and conveyance facilities necessary to achieve full water deliveries to Central Valley wildlife refuges and habitat areas pursuant to section 3406(d) of that Act.

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TITLE III—PROTECTION OF THIRD-PARTY WATER RIGHTS

SEC. 301. OFFSET FOR STATE WATER PROJECT

(a) Implementation Impacts- The Secretary of the Interior shall confer with the California Department of Fish and Wildlife in connection with the implementation of this Act on potential impacts to any consistency determination for operations of the State Water Project issued pursuant to California Fish and Game Code section 2080.1.

(b) Additional Yield- If, as a result of the application of this Act, the California Department of Fish and Wildlife—

(c) Notification Related to Environmental Protections- The Secretary of the Interior shall notify the Director of the California Department of Fish and Wildlife regarding any changes in the manner in which reasonable and prudent alternatives related to the smelt biological opinion or the salmonid biological opinion are implemented and shall confirm that the changes maintain an appropriate level of protection for the species covered by the opinions.

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SEC. 302. AREA OF ORIGIN PROTECTIONS.

- (a) In General- ~~Nothing in this Act shall diminish, impair, or otherwise affect in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections, including, but not limited to, rights to water appropriated prior to December 19, 1914, provided under California law. This Act does not limit or otherwise affect the application of California Water Code Sections 10505, 10505.5, 11128, 11460, and 11463, and Sections 12200 to 12220, inclusive. With respect to the implementation of the provisions of this Act, consistent with section 8 of the 1902 Act, the Secretary of the Interior is directed, in the operation of the Central Valley Project, to adhere to California's water rights laws, including but not limited to, California Water Code Section 85031 and the California Water Code sections referenced therein.~~
- (b) Contracts- With respect to individuals and entities with water rights on the Sacramento River, the mandates of this section may be met, in whole or in part, through a contract with the Secretary executed pursuant to section 14 of Public Law 76-260; 53 Stat. 1187 (43 U.S.C. 389) that is in conformance with the Sacramento River Settlement Contracts renewed by the Secretary in 2005.

SEC. 303. NO REDIRECTED ADVERSE IMPACTS.

- ~~a) In implementing the provisions of this Act, the Secretary of the Interior and the Secretary of Commerce shall ensure that actions taken to implement in compliance with legal obligations imposed pursuant to or as a result of this Act, including such actions related to the implementation of this Act that are needed to comply with section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and other applicable Federal law, shall do not --~~
- ~~(b) Nothing in this Act is intended to modify (i) the existing terms, rights, or obligations of any Central Valley Project water service contract, repayment contract, refuge water supply contract, Sacramento River Settlement contract, San Joaquin River exchange contract; (ii) the existing terms, rights, or obligations of any State Water Project contract; or (iii) any judicial judgment, opinion, or decree regarding the terms, obligations, or limitations of such contracts.~~
- (a) Allocations-
- (1) IN GENERAL- Subject to paragraph (2) and subsection (b), the Secretary of the Interior shall make every reasonable effort in the operation of the Central Valley Project, to allocate water provided for irrigation purposes to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed in compliance with the following:
- (A) Not less than 100 percent of their contract quantities in a 'Wet' year.
(B) Not less than 100 percent of their contract quantities in an 'Above Normal' year.

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- (C) Not less than 100 percent of their contract quantities in a `Below Normal' year that is preceded by an `Above Normal' or a `Wet' year.
 - (D) Not less than 50 percent of their contract quantities in a `Dry' year that is preceded by a `Below Normal,' an `Above Normal,' or a `Wet' year.
 - (E) In all other years not identified herein, not less than twice the allocation percentage to south-of-Delta Central Valley Project agricultural water service contractors, up to 100 percent; provided, that nothing herein shall preclude an allocation to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed that is greater than twice the allocation percentage to South-of-Delta Central Valley Project agricultural water service contractors.
- (2) CONDITIONS- The Secretary's actions under paragraph (a) shall be subject to--
- (A) the priority of individuals or entities with Sacramento River water rights, including those with Sacramento River Settlement Contracts, that have priority to the diversion and use of Sacramento River water over water rights held by the United States for operations of the Central Valley Project;
 - (B) the United States obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors; and
 - (C) the Secretary's obligation to make water available to managed wetlands pursuant to section 3406(d) of the Central Valley Project Improvement Act (Public Law 102-575).

(b) Protection of Municipal and Industrial Supplies- Nothing in subsection (a) shall be deemed to--

- (1) modify any provision of a water service contract that addresses municipal and industrial water shortage policies of the Secretary;
- (2) affect or limit the authority of the Secretary to adopt or modify municipal and industrial water shortage policies; or
- (3) affect or limit the authority of the Secretary to implement municipal and industrial water shortage policies.

Neither subsection (a) nor the Secretary's implementation of subsection (a) shall constrain, govern or affect, directly or indirectly, the operations of the Central Valley Project's American River Division or any deliveries from that Division, its units or its facilities.

(c) Allocations made pursuant to subsection (a) shall not affect allocations to Central Valley Project municipal and industrial water service contractors by either increasing or decreasing allocations to such contractors compared to allocations such contractors would have received absent subsection (a).

(d) No Effect on Allocations- This section shall not--

- (1) affect the allocation of water to Friant Division contractors; or
- (2) result in the involuntary reduction in contract water allocations to individuals or entities with contracts to receive water from the Friant Division.

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(e) Program for Water Rescheduling- The Secretary shall direct that the United States Bureau of Reclamation develop and implement a program to provide for the opportunity for existing Central Valley Project agricultural water service and refuge service contractors within the Sacramento River Watershed to reschedule water, provided for under their Central Valley Project contracts, from one year to the next provided, that the rescheduling of water by such contractors shall not interfere with Central Valley Project operations or diminish the Project's ability to meet its contract obligations.

(f) Definitions- In this section:

- (1) The term “existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed” means water service contractors within the Shasta, Trinity, and Sacramento River Divisions of the Central Valley Project, that have a water service contract in effect, on the date of the enactment of this section, that provides water for irrigation.
- (2) The year type terms used in subsection (a) have the meaning given those year types in the Sacramento Valley Water Year Type (40-30-30) Index.

TITLE IV–MISCELLANEOUS PROVISIONS

SEC. 401. EFFECT ON EXISTING OBLIGATIONS.

Nothing in this Act

(a) shall be deemed to authorize the Secretaries or any other Federal official to take any

action or actions that either,

(1) are likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, consistent with section 7 of the Endangered Species Act, 16 U.S.C. 1536, or

(+) (2) would cause additional adverse effects on listed species beyond those considered under the smelt and salmonid biological opinions;

(b) IN GENERAL. Nothing in this title preempts or modifies any existing obligation of the United States under Federal reclamation law to operate the Central Valley Project in conformity with State law, including established water rights priorities; or

(c) OBLIGATIONS UNDER CENTRAL VALLEY PROJECT IMPROVEMENT ACT. Nothing in this Act affects or modifies any existing obligation under the Central Valley Project Improvement Act (title 34 of Public Law 102-575).

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SEC. 402. LEVEL OF DETAILED REQUIRED FOR ANALYSIS.

In articulating the determinations required under this Act, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the time frame permitted for timely decision-making in response to changing conditions in the Delta.

SEC. 403. TERMINATION OF AUTHORITIES.

This Act shall expire on September 30, 2017, or the date on which the Governor of the State suspends the state of drought emergency declaration, whichever is later.

Subject: Conference Call on Outreach to the Governor

Start: 4/24/2015 1:00 PM

End: 4/24/2015 1:30 PM

Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Tom Birmingham

Required Attendees: 'Watts, John (Feinstein)'; 'Bernhardt, David L.'; 'Dan Dooley'

Subject: Conference Call on Outreach to the Governor

Location:

When: 2015-04-24, 13:00 - 13:30 GMT -7:00 (30 minutes)

Organizer: Tom Birmingham (tbirmingham@wwddata.com)

Required Attendees: Watts, John (Feinstein) (John_Watts@feinstein.senate.gov), Bernhardt, David L. (DBernhardt@BHFS.com), Dan Dooley (dmd@boelenfransen.com)

Please call (800) [REDACTED] - [REDACTED] pass code [REDACTED]

From: Tom Birmingham
Sent: Thursday, April 23, 2015 4:35 PM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'; 'Dan Dooley'
Subject: Legislation

John,

In anticipation of our call tomorrow at 1:00 p.m. PDT, can you circulate to the participants the latest draft of the legislation? I think it would be good to provide Dan an opportunity to review the bill prior to our discussion.

Thank you,
Tom

From: Watts, John (Feinstein)
Sent: Thursday, April 23, 2015 5:06 PM
To: Tom Birmingham
CC: 'Bernhardt, David L.'; 'Dan Dooley'
Subject: RE: Legislation
Attachments: bill 4-23-15.docx

Edits are still in progress, but here is the current confidential draft.

Tom, please note the new section 203, which was requested by Metropolitan based on language we discussed last year. I think these are good science provisions to add.

Note also that I consolidated all the language on water transfers in one section (104), which Janelle had requested, and which I think is a good idea.

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Thursday, April 23, 2015 7:35 PM
To: Watts, John (Feinstein)
Cc: 'Bernhardt, David L.'; 'Dan Dooley'
Subject: Legislation

John,

In anticipation of our call tomorrow at 1:00 p.m. PDT, can you circulate to the participants the latest draft of the legislation? I think it would be good to provide Dan an opportunity to review the bill prior to our discussion.

Thank you,
Tom

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S. _____

California Emergency Drought Relief Act of 2015

114th CONGRESS
1st Session

IN THE SENATE OF THE UNITED STATES

April ___, 2015

AN ACT

To provide short-term water supplies to drought-stricken California.

*Be it enacted by the Senate and House of Representatives of the United States of America
in Congress assembled,*

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

- (a) Short Title- This Act may be cited as the “California Emergency Drought Relief Act of 2015”.
- (b) Table of Contents- The table of contents for this Act is as follows:
Sec. 1. Short title; table of contents.

TITLE I--CALIFORNIA EMERGENCY DROUGHT RELIEF

- Sec. 101. Definitions.
- Sec. 102. Operations under biological opinions.
- Sec. 103. Management of reverse flow under the smelt biological opinion.
- Sec. 104. Inflow / Export ratio for Promoting flexibility through voluntary transfers.
- Sec. 105. Other emergency projects.
- Sec. 106. Temporary operational flexibility during periods of high outflow.
- Sec. 107. Calendar-based triggers.
- Sec. 108. Progress report.
- Sec. 109. Status of surface storage studies.

TITLE II—ACTIONS TO BENEFIT FISH AND REFUGES

- Sec. 201. Actions to benefit endangered fish populations.
- Sec. 202. Pilot program to protect native anadromous fish in the Stanislaus River, the Delta, and other Delta tributaries.

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Sec. 203.

. Improved science to better protect
endangered fish.

Sec. 204. Actions to benefit refuges.

TITLE III--PROTECTION OF THIRD-PARTY WATER RIGHTS

Sec. 301. Offset for State Water Project.

Sec. 302. Area of origin and water rights protections.

Sec. 303. No redirected adverse impacts.

Sec. 304. Allocations for Sacramento Valley Water Service Contractors.

TITLE IV--MISCELLANEOUS PROVISIONS

Sec. 401. Effect on existing obligations.

Sec. 402. Level of detail required for analysis.

Sec. 403. Termination of authorities.

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TITLE I--CALIFORNIA EMERGENCY DROUGHT RELIEF

SEC. 101. DEFINITIONS.

In this title:

- (1) CENTRAL VALLEY PROJECT- The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (106 Stat. 4707).
- (2) DELTA- The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.
- (3) SALMONID BIOLOGICAL OPINION- The term “salmonid biological opinion” means the biological opinion issued by the National Marine Fisheries Service on June 4, 2009.
- (4) SECRETARIES- The term “Secretaries” means--
 - (A) the Secretary of Commerce; and
 - (B) the Secretary of the Interior.
- (5) SMELT BIOLOGICAL OPINION- The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008.
- (6) STATE- The term “State” means the State of California.
- (7) STATE WATER PROJECT- The term “State Water Project” means the water project described by California Water Code section 11550 et seq. and operated by the California Department of Water Resources.

SEC. 102. OPERATIONS UNDER BIOLOGICAL OPINIONS.

The Secretaries shall direct Central Valley project operations and allow State Water
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The Secretaries shall direct Central Valley project operations and allow State Water
operations and allow State Water Project operations to provide the maximum supply of
water possible under current hydrologic conditions;

- a) Operating within the existing smelt and salmonid biological opinions;
- b) Based on information and experience gained since the adoption of those biological opinions (such as management and monitoring of turbidity to protect Delta smelt and water supplies simultaneously, and improved understanding of salmon migration behaviors);
- c) Maximizing the flexibility in the biological opinions;
- d) Consistent with applicable State and federal law (including regulations); and

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e) Subject to the limitations imposed in Sections 302 and 303 of this Act.

SEC. 103. MANAGEMENT OF REVERSE FLOW UNDER THE SMELT BIOLOGICAL OPINION

(a) In implementing the provisions of the smelt biological opinion, or any successor biological opinion, pertaining to management of reverse flow in the Old and Middle Rivers, the Secretary shall not restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers that is less negative than the highest negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 absent a determination based on current scientific data that a less negative reverse flow rate is reasonably required to avoid adverse impacts beyond those considered under the smelt biological opinion.

(b) Any determination to restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers less negative than the highest negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 shall be explained in writing, including an explanation of the data examined and the connection between those data and the choice made, and promptly posted on the Fish and Wildlife Service website.

SEC. 104. PROMOTING FLEXIBILITY THROUGH VOLUNTARY WATER TRANSFERS

a) Inflow/export ratio.

1) The Secretaries shall, in a timely manner, evaluate any proposal to increase flow in the San Joaquin River through a voluntary sale, transfer, or exchange of water from an agency with rights to divert water from the San Joaquin River or its tributaries and shall adopt a 1:1 inflow to export ratio for the increment of increased flow, as measured as a 3-day running average at Vernalis during the period from April 1 through May 31, that results from the voluntary sale, transfer, or exchange unless the Secretaries demonstrate that a 1:1 inflow to export ratio for that increment of increased flow will cause adverse impacts on species listed under the salmonid biological opinion beyond those considered under the biological opinion.

2) Any individual sale, transfer, or exchange using a 1:1 inflow to export ratio adopted under the authority of this section may only proceed if

- (A) the Secretary of the Interior determines that the environmental effects of the proposed sale, transfer, or exchange are consistent with effects permissible under applicable law (including regulations);
- (B) Delta conditions are suitable to allow movement of the acquired, transferred, or exchanged water through the Delta consistent with the Central Valley Project's and the State Water Project's permitted water rights; and

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(C) such voluntary sale, transfer or exchange of water results in flow that is in addition to flow that otherwise would occur in the absence of the voluntary sale, transfer or exchange.

b) Extended window for transfers. Subject to the limitations on maximum transfer amounts, the Secretaries shall allow the period for exports for transfers to include October 1 through November 15, if the following conditions are met:

(1) the Secretary of the Interior determines that the environmental effects of the export of transfers are consistent with effects permissible under applicable law (including regulations);

(2) Delta conditions are suitable to allow the export for transfers consistent with conditions imposed by Central Valley Project and the State Water Project water right permits or licenses; and

(3) the transfer will not violate any Federal or State law and will have no significant adverse effect on the Secretary's ability to deliver water pursuant to Central Valley Project contractual obligations or fish and wildlife obligations under the Central Valley Project Improvement Act, Pub. Law 102-575, Stat. 106 Stat. 4707, or the Department of Water Resources' ability to deliver water pursuant to State Water Project contractual obligations because of limitations in conveyance or pumping capacity.

c) Permitting. The Secretaries shall complete all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on water transfer requests associated with voluntarily fallowing nonpermanent crops in the State, using the shortest practicable process provided under applicable law (including regulations).

SEC. 105. OTHER EMERGENCY PROJECTS

(a) In General- The applicable Secretary shall--

(1) authorize and implement actions to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using the best available science and findings from the United States Geological Survey on diurnal behavior of juvenile salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits, consistent with the California Endangered Species Act and operational criteria and monitoring set forth in the California State Water Resources Control Board's Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions, effective January 31, 2014, or a successor order;

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(2)(A) issue all necessary permit decisions under the authority of the Secretaries using the shortest practicable process provided under applicable law (including regulations) to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality

; and

; and

; and

(B) advise permit applicants described under Subparagraph (A) regarding the design of proposed temporary barriers or operations of gates that would not trigger formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536);

(3)

allow any North of Delta agricultural water service or North of Delta refuge service contractor with unused Central Valley Project water to take delivery of such unused water through April 15, of the contract year immediately following the contract year in which such water was allocated, if--

(A) the contractor requests the extension; and

(B) the requesting contractor certifies that, without the extension, the contractor would have insufficient supplies to adequately meet water delivery obligations; and

(4) in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, and in coordination and in conjunction with non-federal entities, create partnerships to implement instream and offsite projects in the Delta and upstream in the Sacramento River and San Joaquin basins, to include important side channel, riparian, inter-tidal, and floodplain habitats for fish reproduction and rearing; fish screens; and operational and other habitat improvements, that increase the amount of usable water supplies for multiple purposes and that offset the effects on species listed as threatened or

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endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to actions taken under this Act.

(b) Accelerated Project Decision and Elevation-

(1) IN GENERAL- Upon the request of the Governor, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions relating to a project or operation to provide additional water supplies or address emergency drought conditions pursuant to subsection (a) and section 102, including but not limited to water transfers and the placement of temporary rock barriers.

(2) REQUEST FOR RESOLUTION-

(A) IN GENERAL- Upon the request of the Governor, the Secretary of Commerce, or the head of another Federal agency responsible for carrying out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide emergency water supplies.

(B) MEETING- The Secretary of the Interior shall convene a meeting requested under subparagraph (A) not later than 7 days after receiving the meeting request.

(3) NOTIFICATION- Upon receipt of a request for a meeting under this subsection, the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including the project to be reviewed and the date for the meeting.

(4) DECISION- Not later than 10 days after the date on which a meeting is requested under paragraph (2), the head of the relevant Federal agency shall issue a final decision on the project in writing.

(5) MEETING CONVENED BY SECRETARY- The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

SEC. 106. TEMPORARY OPERATIONAL FLEXIBILITY DURING PERIODS OF HIGH OUTFLOW.

(b) Days of high outflow. - Subsection (a) is in effect on any day or days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey. [Checking with BOR if this is the appropriate threshold]

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(c) Compliance With ESA Authorizations.- In carrying out this section, the Secretaries may continue to impose any requirements under the smelt and salmonid biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid additional adverse effects on a listed species beyond the range of those considered under the smelt and salmonid biological opinions.

(d) Other Environmental Protections.-

(1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law, including State Water Resources Control Board Decision 1641, as it may be implemented in any given year.

(2) During the first flush of sediment out of the Delta I need more technical definition, in each water year, and provided that such determination is based upon objective evidence, OMR flow may be managed at rates less negative than the highest negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 for a minimum duration to avoid movement of adult Delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants.

(3) This section shall not affect the application of the salmonid biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those considered under the smelt and salmonid biological opinions. In addition to any other actions to benefit water supply, the Secretary and the Secretary of Commerce shall consider allowing through-Delta water transfers to occur during this period.

(4) During operations under this section, the Secretary of the Interior, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to ensure incidental take levels are not exceeded, and to identify potential negative impacts, if any, and actions necessary to avoid or mitigate impacts of the temporary operational flexibility to species listed under the Endangered Species Act of 1973.

(5) During operations under this section, the Secretaries shall confer with the Director of the California Department of Fish and Wildlife regarding the potential impacts to species listed under the California Endangered Species Act that are not listed under the Endangered Species Act 1973.

(e) Authority.— The Secretaries' actions under this section are authorized by:

(1) The flexibility in the smelt and salmonid biological opinions;

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(2) The emergency consultation provisions of the Endangered Species Act of 1973 and its implementing regulation at section 402.05, title 50, Code of Federal Regulations; and

(3) This Act.

(f) .-Aftermath.-

At the conclusion of the informal consultation under this section, the Secretary of
At the conclusion of the informal consultation under this section, the Secretary of
At the conclusion of the informal consultation under this section, the Secretary of
At the conclusion of the informal consultation under this section, the Secretary of

SEC. 107. CALENDAR-BASED TRIGGERS.

Notwithstanding any calendar based trigger described in the salmonid biological opinion Reasonable and Prudent Alternative, operations of the Central Valley Project and the State Water Project shall not be limited by the Reasonable and Prudent Alternative unless current monitoring data indicate that the actions described in the Reasonable and Prudent Alternative are reasonably required to avoid the impacts identified by the salmonid biological opinion.

SEC. 108. PROGRESS REPORT.

Ninety days after the date of the enactment of this Act and every 90 days thereafter, the Secretaries shall provide a progress report describing the implementation of sections 102 and 103 to the Committee on Natural Resources in the House of Representatives and the Committee on Energy and Natural Resources in the Senate.

SEC. 109. STATUS OF SURFACE STORAGE STUDIES.

One year after the date of the enactment of this Act, the Secretary of the Interior shall provide a progress report on the status of feasibility studies undertaken pursuant to clauses (i) and (ii) of section 103(d)(1)(A) of the Water Supply, Reliability, and Environmental Improvement Act (Public Law 108-361) to the Committee on Natural Resources in the House of Representatives and the Committee on Energy and Natural Resources in the Senate. The report shall include timelines for study completion, draft environmental impact statements, final environmental impact statements, and Records of Decision.

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TITLE II—ACTIONS TO BENEFIT FISH AND REFUGES

SEC. 201. ACTIONS TO BENEFIT ENDANGERED FISH POPULATIONS.

To increase protections of fish listed under the smelt and salmon biological opinions:

a) Electronic Blocking Barrier at the Delta Cross Channel Gates

(1) In coordination with the State Water Resources Control Board and the California Department of Fish and Wildlife, the Secretary of the Interior, in consultation with the Secretary of Commerce, shall:

(A) report to Congress within 90 days of enactment of this Act on the current progress of evaluating electronic blocking barriers at Deadhorse Island to prevent straying of endangered salmonids through the Delta Cross Channel Gates; and

(B) report to Congress within 1 year of enactment of this Act on the effectiveness of such electronic blocking barriers in preventing straying of endangered salmonids.

(2) AUTHORIZATION OF APPROPRIATIONS – There is authorized to be appropriated to carry out this section \$2,000,000 through fiscal year 2017.

b) Gravel and Rearing Area Additions to the Upper Sacramento River –

(1) In coordination with the California Department of Fish and Wildlife and the Secretary of Commerce, the Secretary of the Interior shall provide within 180 days of enactment of this Act:

- a. a report on the cost and effectiveness of additional gravel that were placed downstream of the Keswick Dam in 2013 and 2014 in improving salmon spawning rates;
- b. a report on the feasibility of implementing gravel additions at additional locations to improve salmon spawning rates, and the timetable for implementing any approved locations; and
- c. a report on the feasibility of constructing or restoring additional natural rearing areas in the upper mainstem Sacramento River to improve salmon population recovery.

(2) If the feasibility reports in Paragraph (1) determine that additions of gravel and natural rearing areas are feasible and beneficial for protecting and recovering fish populations, begin implementation of those additions within 1 year of the issuance of the feasibility reports.

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- (3) AUTHORIZATION OF APPROPRIATIONS** – There is authorized to be appropriated to carry out this section:
- (A) \$2,000,000 for fiscal years 2016 and 2017;
(B) \$2,000,000 for fiscal years 2018 and 2019.
- c) **Alternative Hatchery Salmon Release Strategies** – The Secretary of the Interior, in consultation with the Secretary of Commerce, shall:
- (1) Establish pilot programs that would test alternative release strategies for hatchery-raised winter-run salmon to reduce mortality rates beyond those experienced currently, including alternative release locations, trucking options, or barging options.
- (2) Within 3 years of enactment of this Act, and annually thereafter, report to Congress on the progress and results of the pilot programs established in Paragraph (1), and provide recommendations on whether those pilot programs should be continued.
- (3) **AUTHORIZATION OF APPROPRIATIONS** – There are authorized to be appropriated to carry out this section:
- a. \$6,000,000 through fiscal year 2017;
b. \$3,000,000 total for fiscal years 2018, 2019, and 2020;
- d) **Reduce Predator Habitat** – within 2 years of enactment of this Act, the Secretary of Commerce and Secretary of the Interior shall implement a pilot program to:
- (1) Identify natural and artificial factors in the Sacramento River and the Sacramento-San Joaquin River Delta watershed that could be providing favorable predatory fish habitat for fish that prey on juvenile salmon;
- (2) Collect scientific data at those locations to determine if those natural or artificial factors are contributing to predation of endangered fish; and
- (3) Provide recommendations on whether those natural or artificial factors that enable the formation or continuation of predatory fish habitat could be feasibly and effectively modified, in compliance with all applicable state and federal laws and regulations, to reduce predation.
- (4) **AUTHORIZATION OF APPROPRIATIONS** – There are authorized to be appropriated to carry out this section:
- (A) \$2,000,000 for fiscal year 2016;
(B) \$2,000,000 for fiscal year 2017;
(C) \$4,000,000 for fiscal year 2018.

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e) **Eliminate / Reduce Lighting at In-River Structures** – In consultation with the California Department of Fish and Wildlife and other relevant local and state authorities, the Secretary of the Interior and Secretary of Commerce:

- (1) Assess the effectiveness of lowering light intensity at artificial structures in the Sacramento-San Joaquin River Delta to reduce predation of endangered fish; and
- (2) Implement actions to lower light intensity at other artificial structures in the Delta if the assessment in Paragraph (1) determines that the action is effective in reducing predation.
- (3) **AUTHORIZATION OF APPROPRIATIONS** – There is authorized to be appropriated to carry out this section \$3,000,000 through fiscal year 2018.

f) **Evaluate and Improve Delta Pump Fish Salvage System** – The Secretary of the Interior and Secretary of Commerce, in consultation with the California Department of Fish and Wildlife, shall:

- (1) evaluate and report to Congress within 1 year of enactment of this Act on alternatives to re-deposit salvaged salmon smolts and other fish from the Delta that would reduce predation losses, and to reduce predation at the existing fish salvage system.
- (2) [upon identification of feasible alternatives, implement those alternatives within 2 years of issuance of the report in paragraph (1)].
- (3) **AUTHORIZATION OF APPROPRIATIONS** – There is authorized to be appropriated to carry out this section \$10,000,000 through fiscal year 2019.

g) **Reduce Predator Habitat at the Tracy Fish Facility** – The Secretary of the Interior shall:

- (1) Provide within 180 days of enactment of this Act a report on the Bureau of Reclamation's evaluation of an electronic crowder system to remove and relocate predators of endangered fish from the vicinity of the Tracy Fish Facility, including a recommendation on whether the system can be feasibly installed and implemented.
- (2) [If the report in Paragraph (1) finds that the system is feasible, implement the system within 2 years of issuance of the report.]

NOTE: Reclamation estimates that actual construction / implementation work in (f) and (g) combined will cost \$40 million over 6 years.

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h) Trap and Barge Pilot Project to Increase Survivals Through the Delta – The Assistant Administrator and the Commissioner shall, in collaboration with the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife, water agencies, and other interested parties, design, permit, implement and evaluate a pilot program to test the efficacy of an experimental trap and barge program to improve survival of juvenile salmonids emigrating from the San Joaquin watershed though the Delta, as further described below.

(1) Within 30 days of enactment, the Assistant Administrator and the Commissioner shall convene a working group of the relevant agencies and other interested parties through which to develop and execute a plan for the design, budgeting, implementation and evaluation of such a pilot program, utilizing existing expertise on such trap and barge programs as may be available. Such plan shall detail a schedule and budget for the program, and identify the responsible parties for each element of the program.

(2) The Assistant Administrator and the Commissioner shall provide an opportunity for 30 days of public review and comment on the pilot program and also simultaneously seek an expeditious independent peer review of the program to improve its rigor and likelihood of success.

(3) Within 60 days of completion of (2), above, the Assistant Administrator and the Commissioner shall complete the necessary design and evaluations of the pilot program and seek such permits or other regulatory authorizations as may be required under federal law for its prompt implementation and evaluation by the Assistant Administrator, the Commissioner or such other parties as they determine most suitable.

(4) The Assistant Administrator and the Commissioner shall seek to commence implementation of the pilot program in 2016 or as soon thereafter as is possible, and shall conduct such pilot for such period of time as needed to evaluate the efficacy of the program to improve survivals across a range of environmental conditions.

(5) The Assistant Administrator and the Commissioner shall jointly report annually to the Senate Committees on the Environment and Public Works and Energy and Natural Resources and the House Committee on Natural Resources their progress in implementing this section, estimated survival rates through the Delta for both juvenile salmonids that were barged through the Delta and those that were not barged, and if survival rates are significantly higher for barged fish as compared to other outmigrating

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smolts, the Assistant Administrator's and Commissioner's recommendations regarding broadening the pilot program and any relevant recommendations pursuant to section 203.

SECTION 202. PILOT PROGRAM TO PROTECT NATIVE ANADRAMOUS FISH IN THE STANISLAUS RIVER, THE DELTA, AND OTHER DELTA TRIBUTARIES.

(a) Non-native Predator Fish Removal Program on the Stanislaus River.-

(1) IN GENERAL. -- The Assistant Administrator of the National Oceanic and Atmospheric Administration, NOAA Fisheries and Oakdale Irrigation District and the South San Joaquin Irrigation District, in consultation with the United States Fish and Wildlife Service and the California Department of Fish and Wildlife, shall jointly develop and implement a scientifically-based pilot program to remove non-native predator fish from the Stanislaus River not later than 6 months after the date of enactment of this Act. In implementing the program--

(A) STAFFING- By agreement between the Assistant Administrator and the participating districts, the pilot program may be conducted by any combination of district personnel, qualified private contractors, personnel of, on loan to, or otherwise assigned to NOAA Fisheries.

(B) PARTICIPATION BY NOAA FISHERIES- In the event the districts elect to conduct the program using their own personnel or qualified private contractors, the Assistant Administrator has the option to assign an employee of, on loan to, or otherwise assigned to NOAA Fisheries, to be present for all activities performed in the field. The districts shall pay 100 percent of the cost of such participation as specified in paragraph (2).

(C) TIMING OF AGREEMENT - The districts and the Assistant Administrator shall reach agreement on the work plan for the subsequent calendar year on or before October 15 of each calendar year of the pilot program.

(2) Funding.-

(A) CONTRIBUTED FUNDS - The Assistant Administrator is authorized to receive and expend contributed funds for the purposes for which the funds are contributed in a like manner as if said sums had been specifically appropriated for said purposes.

(B) ANNUAL FUNDING- The districts shall be responsible through contributed funds for 100 percent of the cost of the pilot program. On or before December 1 of each year of the pilot program, the Assistant Administrator shall submit to the districts an estimate of the cost to be incurred by the NOAA Fisheries in the following calendar year, if any.

(C) ACCOUNTING- On or before September 1 of each calendar year, the Assistant Administrator shall provide an accounting of the prior calendar year's expenses to the districts. If the estimate paid by the districts was less than the

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actual costs incurred by the NOAA Fisheries, the districts shall have until September 30 of that calendar year to pay the difference pursuant to subparagraph (A), or NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled. If the estimate paid by the districts was greater than the actual costs incurred by the NOAA Fisheries, then a credit shall be provided to the districts, which shall be deducted from the estimate payment the districts must make for the work performed by the NOAA Fisheries, if any, in the next calendar year.

(3) Reporting and Evaluation-

(A) IN GENERAL- On or before the 15th day of each month, the Assistant Administrator shall post on the website of the NOAA Fisheries a tabular summary of the raw data collected in the prior month.

(B) REPORT- On or before June 30 of the calendar year following the completion of the program, the Assistant Administrator and districts shall jointly submit a report for peer review that presents data, analyses, and findings of the pilot program and makes recommendations for further study and action.

(4) Permits Process- Not later than 180 days after filing of application to authorize the pilot program, the Secretary of the Interior and the Secretary of Commerce shall issue permits under section 10(a)(1) of the Endangered Species Act (16 U.S.C. 1539(a)(1)), for the performance of the pilot program.

(b) Pilot Projects to Implement CALFED Invasive Species Program. Not later than January 1, 2017, the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall begin pilot projects to implement the invasive species control program authorized pursuant to Section 103(d)(6)(A)(iv) of Public Law 108-361. The pilot projects shall:

(1) seek to reduce invasive aquatic vegetation, predators, and other competitors which contribute to the decline of native listed pelagic and anadromous species that occupy the Sacramento and San Joaquin Rivers and their tributaries and the Sacramento-San Joaquin Bay-Delta; and

(2) address how to remove, reduce, or control the effects of species including: Asiatic clams, silversides, gobies, Brazilian water weed, largemouth bass, smallmouth bass, striped bass, crappie, bluegill, white and channel catfish, and brown bullheads.

(c) Emergency Environmental Reviews. To expedite these environmentally beneficial programs for the conservation of threatened and endangered species, the Secretaries shall consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this program.

SEC. 203. IMPROVED SCIENCE TO BETTER PROTECT ENDANGERED
SEC. 203. IMPROVED SCIENCE TO BETTER PROTECT ENDANGERED

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a) Delta Smelt Distribution Study.—

(1) IN GENERAL.— No later than January 1, 2016, contingent upon funding, the Secretary, in collaboration with Delta science partners, shall begin to implement a new targeted three-year sampling and monitoring study specifically designed to understand delta smelt abundance, distribution, and the types of habitat occupied by delta smelt during all life stages.

(2) SAMPLING.—The Delta smelt distribution study shall, at a minimum—

- (A) include recording water quality, meteorological, and tidal data;
- (B) be designed to understand delta smelt abundance, distribution, habitat use, and movements throughout the Bay Delta during all seasons;
- (C) consider areas not routinely sampled by existing monitoring programs, including wetland channels, near-shore water, depths below 35 feet, and shallow-water; and
- (D) use the most biologically appropriate survey methods, including sampling gear suited to the type of sampling or monitoring.

b) Real-time monitoring. During the period beginning on December 1, 2015 and ending March 31, 2016, and in each successive December through March period that this Act is in effect, if suspended sediment loads enter the Delta from the Sacramento River and the suspended sediment loads appear likely to raise turbidity levels in Old River north of the export pumps from values below 12 Nephelometric Turbidity Units (NTU) to values above 12 NTU, the Secretary shall—

- (1) conduct daily monitoring using appropriate survey methods at locations including, but not limited to, the vicinity of Station 902 to determine the extent that adult Delta smelt are moving with turbidity toward the export pumps; and
- (2) use results from the monitoring surveys at locations including, but not limited to, the vicinity of Station 902 to determine how increased trawling can inform daily real-time Central Valley Project and State Water Project operations to minimize salvage while maximizing rates of water export consistent with applicable law (including regulations).

SEC. 204. ACTIONS TO BENEFIT REFUGES.

In fiscal year 2015-2016 and in any successive year when there is a declaration of drought emergency by the Governor of California, in addition to funding under section 3407 of the Central Valley Project Improvement Act (106 Stat. 4706), there is authorized to be appropriated to the Secretary \$2 million for the acceleration and completion of water infrastructure and conveyance facilities necessary to achieve full water deliveries to Central Valley wildlife refuges and habitat areas pursuant to section 3406(d) of that Act.

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TITLE III—PROTECTION OF THIRD-PARTY WATER RIGHTS

SEC. 301. OFFSET FOR STATE WATER PROJECT

(a) Implementation Impacts- The Secretary of the Interior shall confer with the California Department of Fish and Wildlife in connection with the implementation of this Act on potential impacts to any consistency determination for operations of the State Water Project issued pursuant to California Fish and Game Code section 2080.1.

(b) Additional Yield- If, as a result of the application of this Act, the California Department of Fish and Wildlife

(c) Notification Related to Environmental Protections- The Secretary of the Interior shall notify the Director of the California Department of Fish and Wildlife regarding any changes in the manner in which reasonable and prudent alternatives related to the smelt biological opinion or the salmonid biological opinion are implemented and shall confirm that the changes maintain an appropriate level of protection for the species covered by the opinions.

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SEC. 302. AREA OF ORIGIN AND WATER RIGHTS PROTECTIONS.

- (a) In General- Nothing in this Act shall diminish, impair, or otherwise affect in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections, including, but not limited to, riparian water rights or rights to water appropriated prior to December 19, 1914, provided under California law. This Act does not limit or otherwise affect the application of California Water Code Sections 10505, 10505.5, 11128, 11460, and 11463, and Sections 12200 to 12220, inclusive, or any other provisions of California water rights law without regard to whether they are specifically set forth herein.
- (b) Contracts- With respect to individuals and entities with water rights on the Sacramento River, the mandates of this section may be met, in whole or in part, through a contract with the Secretary executed pursuant to section 14 of Public Law 76-260; 53 Stat. 1187 (43 U.S.C. 389) that is in conformance with the Sacramento River Settlement Contracts renewed by the Secretary in 2005.

SEC. 303. NO REDIRECTED ADVERSE IMPACTS.

The Secretary of the Interior and the Secretary of Commerce shall ensure that actions taken to implement this Act do not result in the involuntary reduction of water supply to individuals or districts who have contracts for water with the State Water Project or the Central Valley Project, or other water users or purveyors organized under California law that obtain water based on other legal rights.

SEC. 304. ALLOCATIONS FOR SACRAMENTO VALLEY WATER

(a) Allocations

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(1) IN GENERAL- Subject to paragraph (2) and subsection (b), the Secretary of the Interior shall make every reasonable effort in the operation of the Central Valley Project, to allocate water provided for irrigation purposes to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed in compliance with the following:

- (A) Not less than 100 percent of their contract quantities in a `Wet' year.
- (B) Not less than 100 percent of their contract quantities in an `Above Normal' year.
- (C) Not less than 100 percent of their contract quantities in a `Below Normal' year that is preceded by an `Above Normal' or a `Wet' year.
- (D) Not less than 50 percent of their contract quantities in a `Dry' year that is preceded by a `Below Normal,' an `Above Normal,' or a `Wet' year.
- (E) In all other years not identified herein, not less than twice the allocation percentage to south-of-Delta Central Valley Project agricultural water service contractors, up to 100 percent; provided, that nothing herein shall preclude an allocation to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed that is greater than twice the allocation percentage to South-of-Delta Central Valley Project agricultural water service contractors.

(2) CONDITIONS- The Secretary's actions under paragraph (a) shall be subject to--

- (A) the priority of individuals or entities with Sacramento River water rights, including those with Sacramento River Settlement Contracts, that have priority to the diversion and use of Sacramento River water over water rights held by the United States for operations of the Central Valley Project;
- (B) the United States obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors; and
- (C) the Secretary's obligation to make water available to managed wetlands pursuant to section 3406(d) of the Central Valley Project Improvement Act (Public Law 102-575).

(b) Protection of Municipal and Industrial Supplies- Nothing in subsection (a) shall be deemed to--

- (1) modify any provision of a water service contract that addresses municipal and industrial water shortage policies of the Secretary;
- (2) affect or limit the authority of the Secretary to adopt or modify municipal and industrial water shortage policies; or
- (3) affect or limit the authority of the Secretary to implement municipal and industrial water shortage policies.

Neither subsection (a) nor the Secretary's implementation of subsection (a) shall constrain, govern or affect, directly or indirectly, the operations of the Central Valley Project's American River Division or any deliveries from that Division, its units or its facilities.

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(c) Allocations made pursuant to subsection (a) shall not affect allocations to Central Valley Project municipal and industrial water service contractors by either increasing or decreasing allocations to such contractors compared to allocations such contractors would have received absent subsection (a).

(d) No Effect on Allocations- This section shall not--

- (1) affect the allocation of water to Friant Division contractors; or
- (2) result in the involuntary reduction in contract water allocations to individuals or entities with contracts to receive water from the Friant Division.

(e) Program for Water Rescheduling- The Secretary shall direct that the United States Bureau of Reclamation develop and implement a program to provide for the opportunity for existing Central Valley Project agricultural water service and refuge service contractors within the Sacramento River Watershed to reschedule water, provided for under their Central Valley Project contracts, from one year to the next provided, that the program is consistent with existing rescheduling guidelines as utilized by the Bureau of Reclamation for rescheduling water for Central Valley Project water service contractors that are located South of the Delta.

(f) Definitions- In this section:

- (1) The term “existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed” means water service contractors within the Shasta, Trinity, and Sacramento River Divisions of the Central Valley Project, that have a water service contract in effect, on the date of the enactment of this section, that provides water for irrigation.
- (2) The year type terms used in subsection (a) have the meaning given those year types in the Sacramento Valley Water Year Type (40-30-30) Index.

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TITLE IV--MISCELLANEOUS PROVISIONS

SEC. 401. EFFECT ON EXISTING OBLIGATIONS.

Nothing in this Act

- (a) shall be deemed to authorize the Secretaries or any other Federal official to take any action or actions that either
 - (1) are likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical; or
 - (1)(2) would cause additional adverse effects on listed species beyond those considered under the smelt and salmonid biological opinions;
- (b) preempts or modifies any obligation of the United States under Federal reclamation law to operate the Central Valley Project in conformity with State law; or
- (c) affects or modifies any obligation under the Central Valley Project Improvement Act (title 34 of Public Law 102-575).

SEC. 402. LEVEL OF DETAILED REQUIRED FOR ANALYSIS.

In articulating the determinations required under this Act, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the time frame permitted for timely decision-making in response to changing conditions in the Delta.

SEC. 403. TERMINATION OF AUTHORITIES.

This Act shall expire on September 30, 2017, or the date on which the Governor of the State declares an end to the state of drought emergency, whichever is later.

From: Watts, John (Feinstein)
Sent: Friday, April 24, 2015 4:01 PM
To: Tom Birmingham; Bernhardt, David L.
Subject: Current confidential bill text
Attachments: bill 4-24-15.docx

Tom and David,

I have confidentially shared the attached draft with the State and John Bezdek.

Please note that Tom Gibson and the SWP contractors had a couple of edits to section 301(c). I don't think these should be a problem, but please let me know if they are.

Have a great weekend!

John

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S. _____

California Emergency Drought Relief Act of 2015

114th CONGRESS
1st Session

IN THE SENATE OF THE UNITED STATES

April ___, 2015

AN ACT

To provide short-term water supplies to drought-stricken California.

*Be it enacted by the Senate and House of Representatives of the United States of America
in Congress assembled,*

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

- (a) Short Title- This Act may be cited as the “California Emergency Drought Relief Act of 2015”.
- (b) Table of Contents- The table of contents for this Act is as follows:
 - Sec. 1. Short title; table of contents.
 - [Sec. 2. Definitions](#)

TITLE I--CALIFORNIA EMERGENCY DROUGHT RELIEF

- Sec. 101.[Definitions](#).
- ~~See 102.~~ Operations under biological opinions.
- Sec. 1023. Management of reverse flow under the smelt biological opinion.
- Sec. 1034. ~~Inflow / Export ratio for Promoting flexibility through~~ voluntary transfers.
- Sec. 1045. Other emergency projects.
- Sec. 1056. Temporary operational flexibility during periods of high outflow.
- Sec. 1067. Calendar-based triggers.
- Sec. 1078. Progress report.
- Sec. 1089. Status of surface storage studies.

TITLE II—ACTIONS TO BENEFIT FISH AND REFUGES

- Sec. 201. Actions to benefit endangered fish populations.
- Sec. 202. Pilot program to protect native anadromous fish in the Stanislaus River,
~~the Delta, and other Delta tributaries.~~

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Sec. 203.

. Improved science to better protect
endangered fish.

Sec. 204. Actions to benefit refuges.

TITLE III--PROTECTION OF THIRD-PARTY WATER RIGHTS

Sec. 301. Offset for State Water Project.

Sec. 302. Area of origin and water rights protections.

Sec. 303. No redirected adverse impacts.

Sec. 304. Allocations for Sacramento Valley Water Service Contractors.

TITLE IV--MISCELLANEOUS PROVISIONS

Sec. 401. Effect on existing obligations.

Sec. 402. Level of detail required for analysis.

Sec. 403. Termination of authorities.

SEC. 2. DEFINITIONS.

In this Act:

- (1) CENTRAL VALLEY PROJECT- The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (106 Stat. 4707).
- (2) DELTA- The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.
- (3) SALMONID BIOLOGICAL OPINION- The term “salmonid biological opinion” means the biological opinion issued by the National Marine Fisheries Service on June 4, 2009.
- (4) SECRETARIES- The term “Secretaries” means--
 - (A) the Secretary of Commerce; and
 - (B) the Secretary of the Interior.
- (5) SMELT BIOLOGICAL OPINION- The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008.
- (6) STATE- The term “State” means the State of California.
- (7) STATE WATER PROJECT- The term “State Water Project” means the water project described by California Water Code section 11550 et seq. and operated by the California Department of Water Resources.

TITLE I--CALIFORNIA EMERGENCY DROUGHT RELIEF

SEC. 101. OPERATIONS UNDER BIOLOGICAL OPINIONS.

The Secretaries shall direct Central Valley project operations and allow State Water
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operations and allow State Water Project operations to provide the maximum supply of water possible under current hydrologic conditions;

- a) Operating within the smelt and salmonid biological opinions;
- b) Based on information and experience gained since the adoption of those biological opinions (such as management and monitoring of turbidity to protect Delta smelt and water supplies simultaneously, and improved understanding of salmon migration behaviors);

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- c) Maximizing the flexibility in the biological opinions;
- d) Consistent with applicable State and federal law (including regulations); and
- e) Subject to the limitations imposed in Sections 302 and 303 of this Act.

SEC. 102. MANAGEMENT OF REVERSE FLOW UNDER THE SMELT BIOLOGICAL OPINION

(a) In implementing the provisions of the smelt biological opinion, or any successor biological opinion, pertaining to management of reverse flow in the Old and Middle Rivers, the Secretary shall not restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers that is less negative than the highest negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 absent a determination based on current scientific data that a less negative reverse flow rate is reasonably required to avoid adverse impacts beyond those considered under the smelt biological opinion.

(b) Any determination to restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers less negative than the highest negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 shall be explained in writing, including an explanation of the data examined and the connection between those data and the choice made, and promptly posted on the Fish and Wildlife Service website.

SEC. 103. PROMOTING FLEXIBILITY THROUGH VOLUNTARY WATER TRANSFERS

a) Inflow/export ratio.

1) The Secretaries shall, in a timely manner, evaluate any proposal to increase flow in the San Joaquin River through a voluntary sale, transfer, or exchange of water from an agency with rights to divert water from the San Joaquin River or its tributaries and shall adopt a 1:1 inflow to export ratio for the increment of increased flow, as measured as a 3-day running average at Vernalis during the period from April 1 through May 31, that results from the voluntary sale, transfer, or exchange unless the Secretaries demonstrate that a 1:1 inflow to export ratio for that increment of increased flow will cause adverse impacts on the listed species beyond those considered under the salmonid biological opinion.

2) Any individual sale, transfer, or exchange using a 1:1 inflow to export ratio adopted under the authority of this section may only proceed if

- (A) the Secretary of the Interior determines that the environmental effects of the proposed sale, transfer, or exchange are consistent with effects permissible under applicable law (including regulations);
- (B) Delta conditions are suitable to allow movement of the acquired, transferred, or exchanged water through the Delta consistent with the Central Valley Project's and the State Water Project's permitted water rights; and

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(C) such voluntary sale, transfer or exchange of water results in flow that is in addition to flow that otherwise would occur in the absence of the voluntary sale, transfer or exchange.

b) Extended window for transfers. Subject to the limitations on maximum transfer amounts, the Secretaries shall allow the period for exports for transfers to include October 1 through November 15, if the following conditions are met:

(1) the Secretary of the Interior determines that the environmental effects of the export of transfers are consistent with effects permissible under applicable law (including regulations);

(2) Delta conditions are suitable to allow the export for transfers consistent with conditions imposed by Central Valley Project and the State Water Project water right permits or licenses; and

(3) the transfer will not violate any Federal or State law and will have no significant adverse effect on the Secretary's ability to deliver water pursuant to Central Valley Project contractual obligations or fish and wildlife obligations under the Central Valley Project Improvement Act, Pub. Law 102-575, Stat. 106 Stat. 4707, or the Department of Water Resources' ability to deliver water pursuant to State Water Project contractual obligations because of limitations in conveyance or pumping capacity.

c) Permitting. The Secretaries shall complete all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on water transfer requests associated with voluntarily fallowing nonpermanent crops in the State, using the shortest practicable process provided under applicable law (including regulations).

SEC. 104. OTHER EMERGENCY PROJECTS

(a) In general- The applicable Secretary shall--

(1) authorize and implement actions to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using the best available science and findings from the United States Geological Survey on diurnal behavior of juvenile salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits, consistent with the California Endangered Species Act and operational criteria and monitoring set forth in the California State Water Resources Control Board's Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions, effective January 31, 2014, or a successor order;

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(2)(A) issue all necessary permit decisions under the authority of the Secretaries using the shortest practicable process provided under applicable law (including regulations) to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality

; and

; and

; and

(B) advise permit applicants described under Subparagraph (A) regarding the design of proposed temporary barriers or operations of gates that would not trigger formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536);

(3)

allow any North of Delta agricultural water service or North of Delta refuge service contractor with unused Central Valley Project water to take delivery of such unused water through April 15, of the contract year immediately following the contract year in which such water was allocated, if--

(A) the contractor requests the extension; and

(B) the requesting contractor certifies that, without the extension, the contractor would have insufficient supplies to adequately meet water delivery obligations; and

(4)

create partnerships to implement instream and offsite projects in the Delta and create partnerships to implement instream and offsite projects in the Delta and upstream in the Sacramento River and San Joaquin basins, to include important side channel, riparian, inter-tidal, and floodplain habitats for fish reproduction and rearing; fish screens; and operational and other habitat improvements, that increase the amount of usable water supplies for multiple purposes and that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)

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due to actions taken under this Act. Such projects shall be coordinated to the maximum extent practicable with the California Department of Water Resources, the California Department of Fish and Wildlife other non-federal entities.

- (b) Accelerated project decision and elevation-
- (1) IN GENERAL- Upon the request of the Governor, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions relating to a project or operation to provide additional water supplies or address emergency drought conditions pursuant to subsection (a) and section 102, including but not limited to water transfers and the placement of temporary rock barriers.
- (2) REQUEST FOR RESOLUTION-
- (A) IN GENERAL- Upon the request of the Governor, the Secretary of Commerce, or the head of another Federal agency responsible for carrying out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide emergency water supplies.
- (B) MEETING- The Secretary of the Interior shall convene a meeting requested under subparagraph (A) not later than 7 days after receiving the meeting request.
- (3) NOTIFICATION- Upon receipt of a request for a meeting under this subsection, the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including the project to be reviewed and the date for the meeting.
- (4) DECISION- Not later than 10 days after the date on which a meeting is requested under paragraph (2), the head of the relevant Federal agency shall issue a final decision on the project in writing.
- (5) MEETING CONVENED BY SECRETARY- The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

SEC. 105. TEMPORARY OPERATIONAL FLEXIBILITY DURING PERIODS OF HIGH OUTFLOW.

- (b) Days of high outflow. - Subsection (a) is in effect on any day or days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey. [Checking with BOR if this is the appropriate threshold]

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(c) Compliance With Endangered Species Act authorizations.- In carrying out this section, the Secretaries may continue to impose any requirements under the smelt and salmonid biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid additional adverse effects on a listed species beyond the range of those considered under the smelt and salmonid biological opinions.

(d) Other environmental protections.-

(1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law, including State Water Resources Control Board Decision 1641, as it may be implemented in any given year.

(2) During the first flush of sediment out of the Delta need more technical definition in each water year, and provided that such determination is based upon objective evidence, OMR flow may be managed at rates less negative than the highest negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 for a minimum duration to avoid movement of adult Delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants.

(3) This section shall not affect the application of the salmonid biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those considered under the smelt and salmonid biological opinions. In addition to any other actions to benefit water supply, the Secretary and the Secretary of Commerce shall consider allowing through-Delta water transfers to occur during this period.

(4) During operations under this section, the Secretary of the Interior, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to ensure incidental take levels are not exceeded, and to identify potential negative impacts, if any, and actions necessary to avoid or mitigate impacts of the temporary operational flexibility to species listed under the Endangered Species Act of 1973.

(5) During operations under this section, the Secretaries shall confer with the Director of the California Department of Fish and Wildlife regarding the potential impacts to species listed under the California Endangered Species Act that are not listed under the Endangered Species Act 1973.

(e) Authority.— The Secretaries' actions under this section are authorized by:

(1) The flexibility in the smelt and salmonid biological opinions;

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(2) The emergency consultation provisions of the Endangered Species Act of 1973 and its implementing regulation at section 402.05, title 50, Code of Federal Regulations; and

(3) This Act.

(f) .-Aftermath.-

At the conclusion of the informal consultation under this section, the Secretary of Reasonable and Prudent Alternative, operations of the Central Valley Project and the State Water Project shall not be limited by the Reasonable and Prudent Alternative unless current monitoring data indicate that the actions described in the Reasonable and Prudent Alternative are reasonably required to avoid the impacts identified by the salmonid biological opinion.

SEC. 106. CALENDAR-BASED TRIGGERS.

Notwithstanding any calendar based trigger described in the salmonid biological opinion Reasonable and Prudent Alternative, operations of the Central Valley Project and the State Water Project shall not be limited by the Reasonable and Prudent Alternative unless current monitoring data indicate that the actions described in the Reasonable and Prudent Alternative are reasonably required to avoid the impacts identified by the salmonid biological opinion.

SEC. 107. PROGRESS REPORT.

Ninety days after the date of the enactment of this Act and every 90 days thereafter, the Secretaries shall provide a progress report describing the implementation of sections 102 and 103 to the Committee on Natural Resources in the House of Representatives and the Committee on Energy and Natural Resources in the Senate.

SEC. 108. STATUS OF SURFACE STORAGE STUDIES.

One year after the date of the enactment of this Act, the Secretary of the Interior shall provide a progress report on the status of feasibility studies undertaken pursuant to clauses (i) and (ii) of section 103(d)(1)(A) of the Water Supply, Reliability, and Environmental Improvement Act (Public Law 108-361) to the Committee on Natural Resources in the House of Representatives and the Committee on Energy and Natural Resources in the Senate. The report shall include timelines for study completion, draft environmental impact statements, final environmental impact statements, and Records of Decision.

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TITLE II—ACTIONS TO BENEFIT FISH AND REFUGES

SEC. 201. ACTIONS TO BENEFIT ENDANGERED FISH POPULATIONS.

To increase protections of fish listed under the smelt and salmon biological opinions:

a) Electronic Blocking Barrier at the Delta Cross Channel Gates

(1) The Secretary of the Interior, in consultation with the Secretary of Commerce, shall:

(A) report to Congress within 90 days of enactment of this Act on the current progress of evaluating electronic blocking barriers at Deadhorse Island to prevent straying of endangered salmonids through the Delta Cross Channel Gates; and

(B) report to Congress within 1 year of enactment of this Act on the effectiveness of such electronic blocking barriers in preventing straying of endangered salmonids.

(2) In carrying out Paragraph (1), the Secretary of the Interior shall coordinate actions with the State Water Resources Control Board and the California Department of Fish and Wildlife.

(3) AUTHORIZATION OF APPROPRIATIONS – There is authorized to be appropriated to carry out this section \$2,000,000 through fiscal year 2017.

b) Gravel and Rearing Area Additions to the Upper Sacramento River –

(1) The Secretary of the Interior shall provide within 180 days of enactment of this Act:

- a. a report on the cost and effectiveness of additional gravel that were placed downstream of the Keswick Dam in 2013 and 2014 in improving salmon spawning rates;
- b. a report on the feasibility of implementing gravel additions at additional locations to improve salmon spawning rates, and the timetable for implementing any approved locations; and
- c. a report on the feasibility of constructing or restoring additional natural rearing areas in the upper mainstem Sacramento River to improve salmon population recovery.

(2) If the feasibility reports in Paragraph (1) determine that additions of gravel and natural rearing areas are feasible and beneficial for protecting and recovering fish populations, begin implementation of those additions within 1 year of the issuance of the feasibility reports.

(3) In carrying out paragraphs (1) and (2), the Secretary of the Interior shall coordinate with the California Department of Fish and Wildlife and the Secretary of Commerce, t

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- (4) AUTHORIZATION OF APPROPRIATIONS** – There is authorized to be appropriated to carry out this section:
- (A) \$2,000,000 for fiscal years 2016 and 2017;
(B) \$2,000,000 for fiscal years 2018 and 2019.
- c) **Alternative Hatchery Salmon Release Strategies** – The Secretary of the Interior, in consultation with the Secretary of Commerce, shall:
- (1) Establish pilot programs that would test alternative release strategies for hatchery-raised winter-run salmon to reduce mortality rates beyond those experienced currently, including alternative release locations, trucking options, or barging options.
- (2) Within 3 years of enactment of this Act, and annually thereafter, report to Congress on the progress and results of the pilot programs established in Paragraph (1), and provide recommendations on whether those pilot programs should be continued.
- (3) **AUTHORIZATION OF APPROPRIATIONS** – There are authorized to be appropriated to carry out this section:
- a. \$6,000,000 through fiscal year 2017;
b. \$3,000,000 total for fiscal years 2018, 2019, and 2020;
- d) **Reduce Predator Habitat** – within 2 years of enactment of this Act, the Secretary of Commerce and Secretary of the Interior shall implement a pilot program to:
- (1) Identify natural and artificial factors in the Sacramento River and the Sacramento-San Joaquin River Delta watershed that could be providing favorable predatory fish habitat for fish that prey on juvenile salmon;
- (2) Collect scientific data at those locations to determine if those natural or artificial factors are contributing to predation of endangered fish; and
- (3) Provide recommendations on whether those natural or artificial factors that enable the formation or continuation of predatory fish habitat could be feasibly and effectively modified, in compliance with all applicable state and federal laws and regulations, to reduce predation.
- (4) **AUTHORIZATION OF APPROPRIATIONS** – There are authorized to be appropriated to carry out this section:
- (A) \$2,000,000 for fiscal year 2016;
(B) \$2,000,000 for fiscal year 2017;
(C) \$4,000,000 for fiscal year 2018.

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e) **Eliminate / Reduce Lighting at In-River Structures** – The Secretary of the Interior and Secretary of Commerce:

- (1) Assess the effectiveness of lowering light intensity at artificial structures in the Sacramento-San Joaquin River Delta to reduce predation of endangered fish; and
- (2) Implement actions to lower light intensity at other artificial structures in the Delta if the assessment in Paragraph (1) determines that the action is effective in reducing predation.
- (3) In carrying out actions under paragraphs (1) and (2), the Secretary of the Interior and the Secretary of Commerce shall coordinate with the California Department of Fish and Wildlife and other relevant local and state authorities.
- (4) AUTHORIZATION OF APPROPRIATIONS – There is authorized to be appropriated to carry out this section \$3,000,000 through fiscal year 2018.

f) **Evaluate and Improve Delta Pump Fish Salvage System** – The Secretary of the Interior and Secretary of Commerce, shall:

- (1) evaluate and report to Congress within 1 year of enactment of this Act on alternatives to re-deposit salvaged salmon smolts and other fish from the Delta that would reduce predation losses, and to reduce predation at the existing fish salvage system.
- (2) In carrying out actions under paragraph (1), the Secretary of the Interior and Secretary of Commerce shall coordinate with the California Department of Fish and Wildlife.
- (3) AUTHORIZATION OF APPROPRIATIONS – There is authorized to be appropriated to carry out this section \$10,000,000 through fiscal year 2019.

g) **Trap and Barge Pilot Project to Increase Survival Through the Delta** – The Assistant Administrator and the Commissioner shall, in collaboration with the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife, water agencies, and other interested parties, design, permit, implement and evaluate a pilot program to test the efficacy of an experimental trap and barge program to improve survival of juvenile salmonids emigrating from the San Joaquin watershed through the Delta:

- (1) Within 30 days of enactment, the Assistant Administrator and the Commissioner shall convene a working group of the relevant agencies and other interested parties through which to develop and execute a plan for the design, budgeting, implementation and evaluation of such a pilot program, utilizing existing expertise on such trap and barge programs as may be available. Such plan shall detail a schedule and budget for the program, and identify the responsible parties for each element of the program.

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(2) The Assistant Administrator and the Commissioner shall seek to commence implementation of the pilot program in 2016 if possible.

(3) The Assistant Administrator and the Commissioner shall jointly report annually to the Senate Committees on the Environment and Public Works and Energy and Natural Resources and the House Committee on Natural Resources their progress in implementing this section, estimated survival rates through the Delta for both juvenile salmonids that were barged through the Delta and those that were not barged, and if survival rates are significantly higher for barged fish as compared to other outmigrating smolts, the Assistant Administrator's and Commissioner's recommendations regarding broadening the pilot program.

SECTION 202. PILOT PROGRAM TO PROTECT NATIVE ANADRAMOUS FISH IN THE STANISLAUS RIVER, THE DELTA, AND OTHER DELTA TRIBUTARIES.

(a) Non-native Predator Fish Removal Program on the Stanislaus River.-

(1) IN GENERAL-- The Assistant Administrator of the National Oceanic and Atmospheric Administration, NOAA Fisheries and Oakdale Irrigation District and the South San Joaquin Irrigation District, in consultation with the United States Fish and Wildlife Service and the California Department of Fish and Wildlife, shall jointly develop and implement a scientifically-based pilot program to remove non-native predator fish from the Stanislaus River not later than 6 months after the date of enactment of this Act. In implementing the program--

(A) STAFFING- By agreement between the Assistant Administrator and the participating districts, the pilot program may be conducted by any combination of district personnel, qualified private contractors, personnel of, on loan to, or otherwise assigned to NOAA Fisheries.

(B) PARTICIPATION BY NOAA FISHERIES- In the event the districts elect to conduct the program using their own personnel or qualified private contractors, the Assistant Administrator has the option to assign an employee of, on loan to, or otherwise assigned to NOAA Fisheries, to be present for all activities performed in the field. The districts shall pay 100 percent of the cost of such participation as specified in paragraph (2).

(C) TIMING OF AGREEMENT - The districts and the Assistant Administrator shall reach agreement on the work plan for the subsequent calendar year on or before October 15 of each calendar year of the pilot program.

(2) Funding.-

(A) CONTRIBUTED FUNDS - The Assistant Administrator is authorized to receive and expend contributed funds for the purposes for which the funds are

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contributed in a like manner as if said sums had been specifically appropriated for said purposes.

(B) ANNUAL FUNDING- The districts shall be responsible through contributed funds for 100 percent of the cost of the pilot program. On or before December 1 of each year of the pilot program, the Assistant Administrator shall submit to the districts an estimate of the cost to be incurred by the NOAA Fisheries in the following calendar year, if any.

(C) ACCOUNTING- On or before September 1 of each calendar year, the Assistant Administrator shall provide an accounting of the prior calendar year's expenses to the districts. If the estimate paid by the districts was less than the actual costs incurred by the NOAA Fisheries, the districts shall have until September 30 of that calendar year to pay the difference pursuant to subparagraph (A), or NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled. If the estimate paid by the districts was greater than the actual costs incurred by the NOAA Fisheries, then a credit shall be provided to the districts, which shall be deducted from the estimate payment the districts must make for the work performed by the NOAA Fisheries, if any, in the next calendar year.

(3) Reporting and Evaluation-

(A) IN GENERAL- On or before the 15th day of each month, the Assistant Administrator shall post on the website of the NOAA Fisheries a tabular summary of the raw data collected in the prior month.

(B) REPORT- On or before June 30 of the calendar year following the completion of the program, the Assistant Administrator and districts shall jointly submit a report for peer review that presents data, analyses, and findings of the pilot program and makes recommendations for further study and action.

(4) Permits Process- Not later than 180 days after filing of application to authorize the pilot program, the Secretary of the Interior and the Secretary of Commerce shall issue permits under section 10(a)(1) of the Endangered Species Act (16 U.S.C. 1539(a)(1)), for the performance of the pilot program.

(b) Pilot Projects to Implement CALFED Invasive Species Program. Not later than January 1, 2017, the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall begin pilot projects to implement the invasive species control program authorized pursuant to Section 103(d)(6)(A)(iv) of Public Law 108-361. The pilot projects shall:

(1) seek to reduce invasive aquatic vegetation, predators, and other competitors which contribute to the decline of native listed pelagic and anadromous species that occupy the Sacramento and San Joaquin Rivers and their tributaries and the Sacramento-San Joaquin Bay-Delta; and

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(2) remove, reduce, or control the effects of species including: Asiatic clams, silversides, gobies, Brazilian water weed, largemouth bass, smallmouth bass, striped bass, crappie, bluegill, white and channel catfish, and brown bullheads.

(c) Emergency Environmental Reviews. To expedite these environmentally beneficial programs for the conservation of threatened and endangered species, the Secretaries shall consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this program.

SEC. 203. IMPROVED SCIENCE TO BETTER PROTECT ENDANGERED FISH.

a) Delta smelt distribution study.—

(1) IN GENERAL.— No later than January 1, 2016, contingent upon funding, the Secretary, in collaboration with Delta science partners, shall begin to implement a new targeted three-year sampling and monitoring study specifically designed to understand delta smelt abundance, distribution, and the types of habitat occupied by delta smelt during all life stages.

(2) SAMPLING.—The Delta smelt distribution study shall, at a minimum—

- (A) include recording water quality, meteorological, and tidal data;
- (B) be designed to understand delta smelt abundance, distribution, habitat use, and movements throughout the Bay Delta during all seasons;
- (C) consider areas not routinely sampled by existing monitoring programs, including wetland channels, near-shore water, depths below 35 feet, and shallow-water; and
- (D) use the most biologically appropriate survey methods, including sampling gear suited to the type of sampling or monitoring.

b) Real-time monitoring. During the period beginning on December 1, 2015 and ending March 31, 2016, and in each successive December through March period that this Act is in effect, if suspended sediment loads enter the Delta from the Sacramento River and the suspended sediment loads appear likely to raise turbidity levels in Old River north of the export pumps from values below 12 Nephelometric Turbidity Units (NTU) to values above 12 NTU, the Secretary shall—

(1) conduct daily monitoring using appropriate survey methods at locations including, but not limited to, the vicinity of Station 902 to determine the extent that adult Delta smelt are moving with turbidity toward the export pumps; and

(2) use results from the monitoring surveys at locations including, but not limited to, the vicinity of Station 902 to determine how increased trawling can inform daily real-time Central Valley Project and State Water Project operations to minimize salvage while maximizing rates of water export consistent with applicable law (including regulations).

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SEC. 204. ACTIONS TO BENEFIT REFUGES.

In fiscal year 2015-2016 and in any successive year when there is a declaration of drought emergency by the Governor of California, in addition to funding under section 3407 of the Central Valley Project Improvement Act (106 Stat. 4706), there is authorized to be appropriated to the Secretary \$2 million for the acceleration and completion of water infrastructure and conveyance facilities necessary to achieve full water deliveries to Central Valley wildlife refuges and habitat areas pursuant to section 3406(d) of that Act.

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TITLE III—PROTECTION OF THIRD-PARTY WATER RIGHTS

SEC. 301. OFFSET FOR STATE WATER PROJECT.

(a) Implementation Impacts- The Secretary of the Interior shall confer with the California Department of Fish and Wildlife in connection with the implementation of this Act on potential impacts to any consistency determination for operations of the State Water Project issued pursuant to California Fish and Game Code section 2080.1.

(b) Additional yield- If, as a result of the application of this Act, the California Department of Fish and Wildlife requires take authorization under section 2081 for operation of the State Water Project in a manner that directly or indirectly results in reduced water supply to the State Water Project as compared with the water supply available under the smelt biological opinion and the salmonid biological opinion,

(c) Notification related to environmental protections- The Secretary of the Interior or the Secretary of Commerce shall notify the Director of the California Department of Fish and Wildlife regarding any changes in the manner in which the smelt biological opinion or the salmonid biological opinion is implemented and shall confirm that such changes are authorized under the applicable biological opinion.

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SEC. 302. AREA OF ORIGIN AND WATER RIGHTS PROTECTIONS.

- (a) In General- Nothing in this Act shall diminish, impair, or otherwise affect in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections, including, but not limited to, riparian water rights or rights to water appropriated prior to December 19, 1914, provided under California law. This Act does not limit or otherwise affect the application of California Water Code Sections 10505, 10505.5, 11128, 11460, and 11463, and Sections 12200 to 12220, inclusive, or any other provisions of California water rights law without regard to whether they are specifically set forth herein.

I(b) Contracts- With respect to individuals and entities with water rights on the Sacramento River, the mandates of this section may be met, in whole or in part, through a contract with the Secretary executed pursuant to section 14 of Public Law 76-260; 53 Stat. 1187 (43 U.S.C. 389) that is in conformance with the Sacramento River Settlement Contracts renewed by the Secretary in 2005. [Subject to ongoing conversations]

SEC. 303. NO REDIRECTED ADVERSE IMPACTS.

The Secretary of the Interior and the Secretary of Commerce shall ensure that actions taken to implement this Act do not result in the involuntary reduction of water supply to individuals or districts who have contracts for water with the State Water Project or the Central Valley Project, or other water users or purveyors organized under California law that obtain water based on other legal rights.

SEC. 304. ALLOCATIONS FOR SACRAMENTO VALLEY WATER

(a) Allocations

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(1) IN GENERAL- Subject to paragraph (2) and subsection (b), the Secretary of the Interior shall make every reasonable effort in the operation of the Central Valley Project, to allocate water provided for irrigation purposes to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed in compliance with the following:

- (A) Not less than 100 percent of their contract quantities in a 'Wet' year.
- (B) Not less than 100 percent of their contract quantities in an 'Above Normal' year.
- (C) Not less than 100 percent of their contract quantities in a 'Below Normal' year that is preceded by an 'Above Normal' or a 'Wet' year.
- (D) Not less than 50 percent of their contract quantities in a 'Dry' year that is preceded by a 'Below Normal,' an 'Above Normal,' or a 'Wet' year.
- (E) In all other years not identified herein, not less than twice the allocation percentage to south-of-Delta Central Valley Project agricultural water service contractors, up to 100 percent; provided, that nothing herein shall preclude an allocation to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed that is greater than twice the allocation percentage to South-of-Delta Central Valley Project agricultural water service contractors.

(2) CONDITIONS- The Secretary's actions under paragraph (a) shall be subject to--

- (A) the priority of individuals or entities with Sacramento River water rights, including those with Sacramento River Settlement Contracts, that have priority to the diversion and use of Sacramento River water over water rights held by the United States for operations of the Central Valley Project;
- (B) the United States obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors; and
- (C) the Secretary's obligation to make water available to managed wetlands pursuant to section 3406(d) of the Central Valley Project Improvement Act (Public Law 102-575).

(b) Protection of Municipal and Industrial Supplies- Nothing in subsection (a) shall be deemed to--

- (1) modify any provision of a water service contract that addresses municipal and industrial water shortage policies of the Secretary;
- (2) affect or limit the authority of the Secretary to adopt or modify municipal and industrial water shortage policies; or
- (3) affect or limit the authority of the Secretary to implement municipal and industrial water shortage policies.

Neither subsection (a) nor the Secretary's implementation of subsection (a) shall constrain, govern or affect, directly or indirectly, the operations of the Central Valley Project's American River Division or any deliveries from that Division, its units or its facilities.

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(c) Allocations made pursuant to subsection (a) shall not affect allocations to Central Valley Project municipal and industrial water service contractors by either increasing or decreasing allocations to such contractors compared to allocations such contractors would have received absent subsection (a).

(d) No Effect on Allocations- This section shall not--

- (1) affect the allocation of water to Friant Division contractors; or
- (2) result in the involuntary reduction in contract water allocations to individuals or entities with contracts to receive water from the Friant Division.

(e) Program for Water Rescheduling- The Secretary shall direct that the United States Bureau of Reclamation develop and implement a program to provide for the opportunity for existing Central Valley Project agricultural water service and refuge service contractors within the Sacramento River Watershed to reschedule water, provided for under their Central Valley Project contracts, from one year to the next provided, that the program is consistent with existing rescheduling guidelines as utilized by the Bureau of Reclamation for rescheduling water for Central Valley Project water service contractors that are located South of the Delta.

(f) Definitions- In this section:

- (1) The term “existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed” means water service contractors within the Shasta, Trinity, and Sacramento River Divisions of the Central Valley Project, that have a water service contract in effect, on the date of the enactment of this section, that provides water for irrigation.
- (2) The year type terms used in subsection (a) have the meaning given those year types in the Sacramento Valley Water Year Type (40-30-30) Index.

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TITLE IV--MISCELLANEOUS PROVISIONS

SEC. 401. EFFECT ON EXISTING OBLIGATIONS.

Nothing in this Act

- (a) shall be deemed to authorize the Secretaries or any other Federal official to take any action or actions that either
 - (1) are likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical; or
 - (1)(2) would cause additional adverse effects on listed species beyond those considered under the smelt and salmonid biological opinions;
- (b) preempts or modifies any obligation of the United States under Federal reclamation law to operate the Central Valley Project in conformity with State law; or
- (c) affects or modifies any obligation under the Central Valley Project Improvement Act (title 34 of Public Law 102-575).

SEC. 402. LEVEL OF DETAILED REQUIRED FOR ANALYSIS.

In articulating the determinations required under this Act, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the time frame permitted for timely decision-making in response to changing conditions in the Delta.

SEC. 403. TERMINATION OF AUTHORITIES.

This Act shall expire on September 30, 2017, or the date on which the Governor of the State declares an end to the state of drought emergency, whichever is later.

From: Tom Birmingham
Sent: Tuesday, May 12, 2015 9:00 AM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: RE: RE:

John,

In follow up to our discussion last night, I drafted the following:

(a) Except as provided in section 105(d)(2), in implementing the provisions of the smelt biological opinion, or any successor biological opinion, pertaining to management of reverse flow in the Old and Middle Rivers, the Secretary shall not restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers that is less negative than the highest negative reverse flow rate under Reasonable and Prudent Alternative Component 1 and Component 2 absent a determination based on current scientific data that a less negative reverse flow rate is reasonably required to avoid additional adverse impacts beyond those contemplated under operations of the Central Valley Project and State Water Project consistent with the Reasonable and Prudent Alternative described by the smelt biological opinion.

Please check to ensure that it is section 105(d)(2) of the current draft that deals with operations during the "first flush." And call if you have any questions.

Tom

From: Watts, John (Feinstein) [mailto:John_Watts@feinstein.senate.gov]
Sent: Monday, May 11, 2015 3:16 PM
To: Tom Birmingham
Subject: RE: RE:

Good point. But to make that clear in the text, it probably should say "less negative than the highest negative reverse flow rate applicable under RPA Component 1 and Component 2....." Does that work for you?

Your other edit is fine with me.

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Monday, May 11, 2015 5:47 PM
To: Watts, John (Feinstein)
Subject: RE:

John,

I do not think that this language needs to change. If FWS is correct that during the first flush, the RPA requires reverse flow that on average is no more negative than -2000, nothing in the language would change that. The language states, "rates to achieve a reverse flow rate in Old and Middle Rivers that is less negative than the highest negative reverse flow rate under the biological opinion, . . ." So if under Action 1 of Component one, the highest negative reverse flow rate under the biological opinion is -2000 cfs, that is what this language would require.

Please note one change I made to your new language.

Tom

From: Watts, John (Feinstein) [mailto:John_Watts@feinstein.senate.gov]

Sent: Monday, May 11, 2015 2:36 PM

To: tbirmingham@westlandswater.org

Subject: FW:

(a) In implementing the provisions of the smelt biological opinion, or any successor biological opinion, pertaining to management of reverse flow in the Old and Middle Rivers, the Secretary shall not restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers that is less negative than the highest negative reverse flow rate **applicable under** Reasonable and Prudent Alternative Component 1 and Component 2 absent a determination based on current scientific data that a less negative reverse flow rate is reasonably required to avoid **additional** adverse impacts beyond those **contemplated from the operations of the Central Valley Project and State Water Project consistent with the Reasonable and Prudent Alternative described by the smelt biological opinion.**

From: DCardoza@foley.com
Sent: Wednesday, May 13, 2015 7:28 AM
To: amacmillan@roll.com; Dennis Nuxoll; David Longly Bernhardt; Joe Findaro; Nancy Williams; Joseph L. Raeder; Johnny Amaral
CC: PFRussell@foley.com
Subject: Water call

Hi all,

As Dennis Nuxoll has his board in town today he asked me to put together a call for tomorrow afternoon.

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Dennis

Congressman Dennis A. Cardoza
Foley & Lardner LLP
Suite 600
3000 K Street, NW<x-apple-data-detectors://0/0>
Washington, DC 20007-5109<x-apple-data-detectors://0/0>
Phone: 202.295-4015
Fax: 202.672.5399<tel:202.672.5399>
Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>>

Sent from my iPhone

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From: MacMillan, Anne
Sent: Wednesday, May 13, 2015 7:30 AM
To: DCardoza@foley.com
CC: Dennis Nuxoll; David Longly Bernhardt; Joe Findaro; Nancy Williams; Joseph L. Raeder; Johnny Amaral; PFRussell@foley.com
Subject: Re: Water call

Works for me. Thanks for organizing

Anne MacMillan
Roll Global
(202) 550-8525

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From: Joe Raeder
Sent: Wednesday, May 13, 2015 7:36 AM
To: MacMillan, Anne; DCardoza@foley.com
CC: Dennis Nuxoll; David Longly Bernhardt; Joe Findaro; Nancy Williams; Johnny Amaral; PFRussell@foley.com
Subject: RE: Water call

Me, too.

-----Original Message-----

From: MacMillan, Anne [<mailto:AMacMillan@roll.com>]
Sent: Wednesday, May 13, 2015 10:30 AM
To: DCardoza@foley.com
Cc: Dennis Nuxoll; David Longly Bernhardt; Joe Findaro; Nancy Williams; Joe Raeder; Johnny Amaral; PFRussell@foley.com
Subject: Re: Water call

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> Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>>
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END-ANTISPAM-VOTING-LINKS

From: Johnny Amaral
Sent: Wednesday, May 13, 2015 7:38 AM
To: Joe Raeder
CC: MacMillan, Anne; DCardoza@foley.com; Dennis Nuxoll; David Longly Bernhardt; Joe Findaro; Nancy Williams; PFRussell@foley.com
Subject: Re: Water call

Amaral is in

Best,

Johnny Amaral

> On May 13, 2015, at 7:36 AM, "Joe Raeder" <JRaeder@tfqnet.com> wrote:
>
> Me, too.
>
> -----Original Message-----
> From: MacMillan, Anne [<mailto:AMacMillan@roll.com>]
> Sent: Wednesday, May 13, 2015 10:30 AM
> To: DCardoza@foley.com
> Cc: Dennis Nuxoll; David Longly Bernhardt; Joe Findaro; Nancy Williams; Joe Raeder; Johnny Amaral; PFRussell@foley.com
> Subject: Re: Water call
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> Works for me. Thanks for organizing
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> (202) 550-8525
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>> Sent from my iPhone
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> -----
> END-ANTISPAM-VOTING-LINKS
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From: Joe Raeder
Sent: Wednesday, May 13, 2015 8:01 AM
To: DCardoza@foley.com; amacmillan@roll.com; Dennis Nuxoll; David Longly Bernhardt; Joe Findaro; Nancy Williams; Johnny Amaral
CC: PFRussell@foley.com
Subject: RE: Water call

????? Just what we need, decisive leadership.....

Loretta Sanchez campaign changes course, says no decision on Senate run

Highlights

Congresswoman's aides say email announcement sent in error

Consultant Bill Carrick: "Quite a lot of people may have gotten it by mistake. But it was a mistake"

Read more here: <http://www.sacbee.com/news/politics-government/capitol-alert/article20789487.html#storylink=cpy>

-----Original Message-----

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Sent: Wednesday, May 13, 2015 10:28 AM
To: amacmillan@roll.com; Dennis Nuxoll; David Longly Bernhardt; Joe Findaro; Nancy Williams; Joe Raeder; Johnny Amaral
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Phone: 202.295-4015
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END-ANTISPAM-VOTING-LINKS

From: DCardoza@foley.com
Sent: Wednesday, May 13, 2015 8:27 AM
To: Joe Raeder
CC: amacmillan@roll.com; Dennis Nuxoll; David Longly Bernhardt; Joe Findaro; Nancy Williams; Johnny Amaral; PFRussell@foley.com
Subject: Re: Water call

Can't speak for miss step but at least she is good on our issue. Dennis

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Loretta Sanchez campaign changes course, says no decision on Senate run

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Read more here: https://urldefense.proofpoint.com/v2/url?u=http-3A__www.sacbee.com_news_politics-2Dgovernment_capitol-2Dalert_article20789487.html-23storylink-3Dcpy&d=AwIGaQ&c=Rlm5WhGmPEr8srpDE4r86Q&r=yhMHKvJkYaWoH8bkmjCNM24pCPMnJRMu5cnOh9t0O7w&m=KLC_952V-_ZiH_EC3R-ugx2YtsmH9lbeXVAXt9Z0ZkQ&s=iXGH9iVybPe_1JdQHYj3Sin2w4jBPN00hpMn7v3l1io&e=

-----Original Message-----

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3Ds&d=AwIGaQ&c=Rlm5WhGmPEr8srpDE4r86Q&r=yhMHKvJkYaWoH8bkmjCNM24pCPMnJRMu5cnOh9t0O7w&m=KLC_95
2V-_ZiH_EC3R-ugx2YtsmH9lbeXVAXt9Z0ZkQ&s=MaEd0Gzj-yVpmxsQRxfTjF7jCPoCGWeCmVmXPiVOs3I&e=

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3Dp&d=AwIGaQ&c=Rlm5WhGmPEr8srpDE4r86Q&r=yhMHKvJkYaWoH8bkmjCNM24pCPMnJRMu5cnOh9t0O7w&m=KLC_95
2V-_ZiH_EC3R-ugx2YtsmH9lbeXVAXt9Z0ZkQ&s=n7XG1JLlHlj2pWdqTMHYvL38Iz1RJ_u56rSeDuSpBV8&e=

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3Dn&d=AwIGaQ&c=Rlm5WhGmPEr8srpDE4r86Q&r=yhMHKvJkYaWoH8bkmjCNM24pCPMnJRMu5cnOh9t0O7w&m=KLC_95

2V-_ZiH_EC3R-ugx2YtsmH9lbeXVAXt9Z0ZkQ&s=ItspeevKQwrJUR5xJ5Tg5cihC0Mb6VM1eMJWmZHAFc&e=
Forget vote: https://urldefense.proofpoint.com/v2/url?u=https-3A__antispam.roaringpenguin.com_canit_b.php-3Fi-3D04Orqs3Xj-26m-3D03f39879f8d3-26t-3D20150513-26c-3Df&d=AwIGaQ&c=Rlm5WhGmPEr8srpDE4r86Q&r=yhMHKvJkYaWoH8bkmjCNM24pCPMnJRMu5cnOh9tO7w&m=KLC_95
2V-_ZiH_EC3R-ugx2YtsmH9lbeXVAXt9Z0ZkQ&s=ohFNrx7SN6S7mijBWl9AitbFTUgTt5h-j3NxCkwKA9A&e=

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From: Joe Raeder
Sent: Wednesday, May 13, 2015 8:31 AM
To: DCardoza@foley.com
CC: amacmillan@roll.com; Dennis Nuxoll; David Longly Bernhardt; Joe Findaro; Nancy Williams; Johnny Amaral; PFRussell@foley.com
Subject: RE: Water call

..and that would be great.

-----Original Message-----

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To: Joe Raeder
Cc: amacmillan@roll.com; Dennis Nuxoll; David Longly Bernhardt; Joe Findaro; Nancy Williams; Johnny Amaral; PFRussell@foley.com
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Suite 600
3000 K Street, NW<x-apple-data-detectors://0/0> Washington, DC 20007-5109<x-apple-data-detectors://0/0>
Phone: 202.295-4015
Fax: 202.672.5399<tel:202.672.5399>
Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>>

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Highlights
Congresswoman's aides say email announcement sent in error

Consultant Bill Carrick: "Quite a lot of people may have gotten it by mistake. But it was a mistake"

Read more here: https://urldefense.proofpoint.com/v2/url?u=http-3A__www.sacbee.com_news_politics-2Dgovernment_capitol-2Dalert_article20789487 html-23storylink-

3Dcpy&d=AwIGaQ&cc=Rlm5WhGmPEr8srpDE4r86Q&r=yhMHKvJkYaWoH8bkmjCNM24pCPMnJRMu5cnOh9t0O7w&m=KLC_952V-_ZiH_EC3R-ugx2YtsmH9lbeXVAXt9Z0ZkQ&s=iXGH9iVybPe_1JdQHYj3Sin2w4jBPN00hpMn7v3l1io&e=

-----Original Message-----

From: DCardoza@foley.com<<mailto:DCardoza@foley.com>> [mailto:DCardoza@foley.com]

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Dennis

Congressman Dennis A. Cardoza

Foley & Lardner LLP

Suite 600

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END-ANTISPAM-VOTING-LINKS

From: Nancy Williams
Sent: Wednesday, May 13, 2015 11:43 AM
To: 'Joe Raeder'; DCardoza@foley.com
CC: amacmillan@roll.com; 'Dennis Nuxoll'; 'David Longly Bernhardt'; 'Joe Findaro'; 'Johnny Amaral'; PFRussell@foley.com
Subject: RE: Water call

I can and will do the call tomorrow.

Nancy

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Read more here:

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=20150513&c=f

END-ANTISPAM-VOTING-LINKS

From: Watts, John (Feinstein)
Sent: Friday, May 15, 2015 8:38 AM
To: Tom Birmingham; Bernhardt, David L.
Subject: Confidential proposed edits from NOAA
Attachments: Feinstein Combined Comments Augmented 5.14.2015.docx

Tom,

I think the proposed edits to the core standard work. Tom and David, I would like to know if you agree.

Please also review the language in section 104(a) on the Delta Cross Channel Gates.

I need to talk to you today about a couple of other technical issues. I am trying to send a revised draft to the State by the end of the day.

Best,

John

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Administration Technical Comments 5.10.2015

Additional Comments 5.14.2015

Major Overall Comments

- 1. We appreciate the significant refinements in the text of the revisions, which reduce direct conflicts with existing standards under the ESA. Problems of inconsistency remain, but they are reduced. We also continue to be of the view, however, that from a technical perspective, operations under the draft will provide little if any additional water supplies beyond current drought operations.**
- 2. We also appreciate the range of Congressional perspectives regarding the continued applicability of the ESA to current operations, and the aspirations of these proposals to balance these perspectives with the objective of getting something done to help a very difficult situation. We share those objectives and we appreciate the desire to congressionally ratify the current drought operations being implemented administratively. Nonetheless, we are of the view that a congressional ratification could be much more simple and direct,**
- 3. Enactment of this legislation will generate significant litigation around real time adjustments in operations that the six federal and state agencies have executed with considerable success over the last two years.**
- 4. This litigation will likely result in deeply cumbersome judicial intervention into “real time operations” that will be counterproductive to expanding the desired flexibility in operations to respond to real time conditions. We believe that the federal and state agencies have exhibited significant and successful efforts to exercise these flexibilities in very difficult circumstances, and thus far without litigation.**
- 5. Litigation around drought operations in 2016 will effectively terminate the ability to complete work on the California Water Fix during the Obama Administration and undercut a major long-term priority for the Obama and Brown administrations.**
- 6. The legislation fails to recognize the significant role of the State Water Board orders and other state law in project operations and will render far more difficult the tight integration the six agencies (federal and state) have executed over the last two years.**
- 7. The Obama Administration strongly recommends exploring other measures that can avoid these significant impediments and otherwise offer important and constructive relief during these difficult drought years. We intend by separate communication to offer concepts that we**

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Additional Comments 5.14.2015

would hope would stimulate positive and constructive engagement as the drafting process matures.

Issues Carried Forward from Previously Proposed Legislation

- **Impacts to other High-Priority Actions.** Activities mandated in the draft legislation direct new and expanded agency activities without providing all necessary funding (e.g. Sec 105(d)(4) and Sec 107). This will redirect funding, focus, and personnel away from other agency and Administration priorities like drought response. Also, the Service and Reclamation will not be able to complete ESA Section 7 activities related to a new north Delta conveyance facility (formerly envisioned as a conservation measure associated with the Bay-Delta Conservation Plan and now with the California Water Fix) in a reasonable timeframe.
- **Sec 104(a)(2)(A)**, This states the Secretary shall advise permit applicants that temporary barriers or operable gates would be designed such that formal Section 7 consultation under ESA would not be necessary. Many of these barriers and/or operable gates have already been designed. It would be hard to argue that 1) currently-designed barriers/gates wouldn't require formal consultation, and 2) that these barriers/gates could be designed in a way in which formal consultation would not be necessary.
- **Sec 104(b)**, This language would require a final decision on a project within 17 days after request by the Governor. While the USFWS could make permit decisions within 17 days of receipt of a complete and adequate project description and effects analysis, USFWS may not be able to meet such a deadline if the project description and effects analysis are not, or cannot, be delivered until late in the 17 day period.

S. _____

California Emergency Drought Relief Act of 2015

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Administration Technical Comments 5.10.2015
Additional Comments 5.14.2015

114th CONGRESS
1st Session

IN THE SENATE OF THE UNITED STATES

April ___, 2015

AN ACT

To provide short-term water supplies to drought-stricken California.

*Be it enacted by the Senate and House of Representatives of the United States of America
in Congress assembled,*

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

- (a) Short Title- This Act may be cited as the “California Emergency Drought Relief Act of 2015”.
- (b) Table of Contents- The table of contents for this Act is as follows:
 - Sec. 1. Short title; table of contents.
 - Sec. 2. Definitions

TITLE I--CALIFORNIA EMERGENCY DROUGHT RELIEF

- Sec. 101 Operations under biological opinions.
- Sec. 102. Management of reverse flow under the smelt biological opinion.
- Sec. 1034. Promoting flexibility through voluntary transfers.
- Sec. 104. Other emergency projects.
- Sec. 105. Temporary operational flexibility during periods of high outflow.
- Sec. 106. Calendar-based triggers.
- Sec. 107. Progress report.
- Sec. 108. Status of surface storage studies.

TITLE II—ACTIONS TO BENEFIT FISH AND REFUGES

- Sec. 201. Actions to benefit endangered fish populations.
- Sec. 202. Pilot program to protect native anadromous fish in the Stanislaus River, the Delta, and other Delta tributaries.
- Sec. 203.. Improved science to better protect endangered fish.
- Sec. 204. Actions to benefit refuges.

TITLE III--PROTECTION OF THIRD-PARTY WATER RIGHTS

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Additional Comments 5.14.2015

- Sec. 301. Offset for State Water Project.
- Sec. 302. Area of origin and water rights protections.
- Sec. 303. No redirected adverse impacts.
- Sec. 304. Allocations for Sacramento Valley Water Service Contractors.

TITLE IV--MISCELLANEOUS PROVISIONS

- Sec. 401. Effect on existing obligations.
- Sec. 402. Level of detail required for analysis.
- Sec. 403. Termination of authorities.

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SEC. 2. [DEFINITIONS] -

In this Act:

- (1) CENTRAL VALLEY PROJECT- The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (106 Stat. 4707).
- (2) DELTA- The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.
- (3) SALMONID BIOLOGICAL OPINION- The term “salmonid biological opinion” means the biological opinion issued by the National Marine Fisheries Service on June 4, 2009.
- (4) SECRETARIES- The term “Secretaries” means--
 - (A) the Secretary of Commerce; and
 - (B) the Secretary of the Interior.
- (5) SMELT BIOLOGICAL OPINION- The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008.
- (6) STATE- The term “State” means the State of California.
- (7) STATE WATER PROJECT- The term “State Water Project” means the water project described by California Water Code section 11550 et seq. and operated by the California Department of Water Resources.

Commented [A1]: Where is the definition of drought? We can't evaluate this well because we don't easily see whether this is for one additional year/ if drought continues, or more open ended. If open ended, our concerns are much higher. Previous versions used a NOAA Weather Service definition, rather than a Governors declaration

TITLE I--CALIFORNIA EMERGENCY DROUGHT RELIEF

SEC. 101. OPERATIONS UNDER BIOLOGICAL OPINIONS.

The Secretaries shall direct Central Valley project operations and allow State Water Project operations to provide the maximum supply of water possible under current hydrologic conditions;

- a) Operating within the smelt and salmonid biological opinions;
- b) Based on information and experience gained since the adoption of those biological opinions (such as management and monitoring of turbidity to protect Delta smelt and water supplies simultaneously, and improved understanding of salmon migration behaviors);
- c) Maximizing the flexibility in the biological opinions;
- d) Consistent with applicable State and federal law (including regulations); and
- e) Subject to the limitations imposed in Sections 302 and 303 of this Act.

Commented [A2]: •Sec 101, States that CVP and SWP operations shall provide the maximum supply of water possible under current hydrologic conditions. The “maximum supply of water possible under current hydrologic conditions” clause suggests that needs for fish species would not be considered. Recommend rewording to state, “...maximum supply of water possible under current hydrologic conditions, while taking into account the needs of native fish species”

Commented [A3]: •Sec 101 (a)(3), Allowing water to be banked from one year to the next is a change from current practice where water is generally not banked past the end of the contract year. This could have a large effect on carry over reservoir storage available for winter run spawning the following year. Delivering this water at the call of the water contractor could increase fluctuating flows in the river which could dewater redds and strand fish in the upper Sacramento River in the Redding area

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Administration Technical Comments 5.10.2015

Additional Comments 5.14.2015

SEC. 102. MANAGEMENT OF REVERSE FLOW UNDER THE SMELT BIOLOGICAL OPINION

(a) In implementing the provisions of the smelt biological opinion, or any successor biological opinion, pertaining to management of reverse flow in the Old and Middle Rivers, the Secretary shall not restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers that is less negative than the highest negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 absent a determination based on current scientific data that a less negative reverse flow rate is reasonably required to avoid adverse impacts beyond those anticipated to occur through the implementation of the smelt biological opinion.

Commented [A4]: The Term “adverse impacts” is not defined and could be interpreted in a variety of ways

(b) Any determination to restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers less negative than the highest negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 shall be explained in writing, including an explanation of the data examined and the connection between those data and the choice made, and promptly posted on the Fish and Wildlife Service website.

Commented [A5]: The phrase “beyond those considered under the smelt biological opinion” is highly problematic and would be detrimental to Delta Smelt. If this language is implemented, the Secretary would not be able to implement pumping levels that achieve OMR less negative than -5000 cfs unless there were impacts *beyond* those identified in the Biological Opinion. However, under operations currently considered in the Biological Opinion, less negative OMR is, at times, necessary to be sufficiently protective of Delta Smelt. This Water Year, for example, Water Operators and Fish Agencies worked cooperatively

SEC. 103. PROMOTING FLEXIBILITY THROUGH VOLUNTARY WATER TRANSFERS

a) Inflow/export ratio.

1) The Secretaries shall, in a timely manner, evaluate any proposal to increase flow in the San Joaquin River through a voluntary sale, transfer, or exchange of water from an agency with rights to divert water from the San Joaquin River or its tributaries and shall adopt a 1:1 inflow to export ratio for the increment of increased flow, as measured as a 3-day running average at Vernalis during the period from April 1 through May 31, that results from the voluntary sale, transfer, or exchange unless the Secretaries demonstrate that a 1:1 inflow to export ratio for that increment of increased flow will cause adverse impacts on the listed species beyond those anticipated to occur through the implementation of the salmonid biological opinion.

Commented [A6]: This process is very inconsistent with the daily directors calls that were held this year. Would create a new burden on FWS that is not helpful

2) Any individual sale, transfer, or exchange using a 1:1 inflow to export ratio adopted under the authority of this section may only proceed if

- (A) the Secretary of the Interior determines that the environmental effects of the proposed sale, transfer, or exchange are consistent with effects permissible under applicable law (including regulations);
- (B) Delta conditions are suitable to allow movement of the acquired, transferred, or exchanged water through the Delta consistent with the Central Valley Project’s and the State Water Project’s permitted water rights; and

Commented [A7]: This provision is not necessary during drought. The RPA is already 1:1. Is this provision intended to apply to non-drought years?

Commented [A8]: If this provision is for non-critically dry years, then this operation was not part of the 2008 BA Project Description or 2009 RPA and would trigger re-initiation. There would be additional effects that have not been analyzed. If this passed, there would be confusion about whether reinitiation was triggered and we would start arguing about whether the effects had been previously analyzed or not – creating whole new avenues for litigation and discord

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- (C) such voluntary sale, transfer or exchange of water results in flow that is in addition to flow that otherwise would occur in the absence of the voluntary sale, transfer or exchange.
- b) Extended window for transfers. Subject to the limitations on maximum transfer amounts, the Secretaries shall allow the period for exports for transfers to include October 1 through November 15, if the following conditions are met:
- (1) the Secretary of the Interior determines that the environmental effects of the export of transfers are consistent with effects permissible under applicable law (including regulations);
- (2) Delta conditions are suitable to allow the export for transfers consistent with conditions imposed by Central Valley Project and the State Water Project water right permits or licenses; and
- (3) the transfer will not violate any Federal or State law and will have no significant adverse effect on the Secretary's ability to deliver water pursuant to Central Valley Project contractual obligations or fish and wildlife obligations under the Central Valley Project Improvement Act, Pub. Law 102-575, Stat. 106 Stat. 4707, or the Department of Water Resources' ability to deliver water pursuant to State Water Project contractual obligations because of limitations in conveyance or pumping capacity.
- c) Permitting. The Secretaries shall complete all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on water transfer requests associated with voluntarily fallowing nonpermanent crops in the State, using the shortest practicable process provided under applicable law (including regulations).

Commented [A9]: We are not sure what is meant by the “maximum transfer amount”

Commented [A10]: NMFS BiOp also has July-sept transfer window so think that Sec of Commerce should also be included

Commented [A11]: This doesn't make any sense because we know now those effects weren't analyzed in 2008 BA or 2009 RPA. The most efficient way to get this result is to allow the Regional Team to continue to process incremental evaluations of Fall transfer window through our drought contingency planning process. This would add more layers and possibly create more legal liability – which are both harmful. There are no objections to efficiently processing these fall transfers, but we do need to do new, expected evaluations of effects (which should be minimal)

SEC. 104. OTHER EMERGENCY PROJECTS

- (a) In general- The applicable Secretary shall--

- (1) In the event of continuing drought, the Secretaries shall in close coordination with the State evaluate through a pilot study or other means the ability to operate the Delta Cross Channel Gates diurnally or as otherwise may be suitable to both protect out-migrating salmon and manage salinities in the Interior Delta. The Secretaries shall design, implement and evaluate such real time monitoring capabilities in the vicinity of the DCC to enable more effective real time operations of the DCC in order to meet these multiple objectives efficiency. Such a pilot project shall be designed and implemented

Commented [A12]: Sec 103(c) and Sec 104(a)(2)(A), It is unclear what is envisioned by the phrase “shortest practicable process provided under applicable law (including regulations)” Would this include Emergency Consultation? Informal consultation? Process described in Sec 104(b) of this draft legislation?

Commented [A13]: It is really important this one is pegged to drought exception procedure only. Otherwise, it is really important that gates stay closed Dec 15 – June, as determined to be necessary by the RPA

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in a manner that is When there are Delta salinity concerns, authorize and implement actions to ensure that the Delta Cross Channel Gates remain open to the maximum extent [using necessary to effectively manage Delta salinity] using the best available science and findings from the United States Geological Survey on diurnal behavior of juvenile salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits, consistent with the California Endangered Species Act and operational criteria and monitoring set forth in the California State Water Resources Control Board's Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions, effective January 31, 2014, or a successor order;

(2)(A) issue all necessary permit decisions under the authority of the Secretaries using the shortest practicable process provided under applicable law (including regulations) to place and use temporary barriers [in Delta channels to improve water quantity] and quality; and

(B) work with potential permit applicants and the relevant state authorities on design and construction strategies that will minimize adverse effects of these temporary barriers and improve their timely and efficient approvals, consistent with applicable law.

);

);

);

(3)

allow any North of Delta agricultural water service or North of Delta refuge service contractor with unused Central Valley Project water to take delivery of such unused water through April 15, of the contract year immediately following the contract year in which such water was allocated, if--

- (A) the contractor requests the extension; and
- (B) the requesting contractor certifies that, without the extension, the contractor would have insufficient supplies to adequately meet water delivery obligations; and

(4) [create] partnerships to implement instream and offsite projects in the Delta and upstream in the Sacramento River and San Joaquin basins, to include important side channel, riparian, inter-tidal, and floodplain habitats for fish reproduction and rearing; fish screens; and operational and other habitat improvements [that offset]

Commented [A14]: This doesn't make sense operationally and will cause confusion. The DCC should remain closed during most of the migration season, unless there are Delta Salinity concerns. Reclamation agrees with this. This is inconsistent with RPA, D1641 and drought contingency planning process. Potentially very harmful. Tried to fix by inserting "when there are Delta salinity concerns..."

Commented [A15]: There are times that Project operators would want to have the DCC Gates closed to manage salinity on the mainstem of the Sacramento River

Commented [A16]: Not clear on why the specific call out under CESA unless related to SWRCB? DCC is federal facility and operation would be in compliance with ESA

Commented [A17]: Note: operable gates are typically considered a long-term action. Is the intent here to be "temporary" operable gates?

Commented [A18]: What does "operable gates" refer to? That doesn't sound like a temporary drought structure. We are only discuss temporary rock structures, not operable gates which have been very harmful to fish in the past. Also, the drought barriers are not a water supply project, they are emergency projects for salinity management. This language will create confusion on project purpose and scope, which then creates significant delays. We have had a lot of confusion already in the Region that has been worked through. This would set us back significantly. We recommend deleting "operable gates" as outside of what has been contemplated to assist in salinity controls

Commented [A19]: Not sure that barriers really improve water quantity- may allow for some preservation of upstream storage

Commented [A20]: Permits required for barriers/gates are from USACE not Interior/Commerce

Commented [A21]: •Sec 105(f). It is unlikely that Section 7 requirements related to Section 105 would be met through informal consultation, as incidental take is highly likely. Also, the language in this sub-section is pre-decisional. It is only through the completion of a consultation and/or reinitiation itself that Reclamation and the Service would be able to determine if effects remain within the range considered in the BiOps

Commented [A22]: RED FLAG: This edit reads like a direct ESA override. Big problem. Previous language much preferred. What are intentions here?

Commented [A23]: Who is responsible for this?

Commented [A24]: Recommend striking this phrase as a standalone. Not feasible to make a finding that an individual restoration project increases water supplies. Recommend deletion

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the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to actions taken under this Act. Such projects shall be coordinated to the maximum extent practicable with the California Department of Water Resources, the California Department of Fish and Wildlife other non-federal entities.

(b) Accelerated project decision and elevation-

(1) IN GENERAL- Upon the request of the Governor, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions relating to a project or operation to provide additional water supplies or address emergency drought conditions pursuant to subsection (a) and section 102, including but not limited to water transfers and the placement of temporary rock barriers.

(2) REQUEST FOR RESOLUTION-

(A) IN GENERAL- Upon the request of the Governor, the Secretary of Commerce, or the head of another Federal agency responsible for carrying out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide emergency water supplies.

(B) MEETING- The Secretary of the Interior shall convene a meeting requested under subparagraph (A) not later than 7 days after receiving the meeting request.

(3) NOTIFICATION- Upon receipt of a request for a meeting under this subsection, the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including the project to be reviewed and the date for the meeting.

(4) DECISION- Not later than 10 days after the date on which a meeting is requested under paragraph (2), the head of the relevant Federal agency shall issue a final decision on the project in writing.

(5) MEETING CONVENED BY SECRETARY- The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

Commented [A25]: This process, while well intended, will add more bureaucratic layers, delays and confusion, and will slow down the current efficient regional process. This seems like an ESA/RPA override a well. For example Is any written administrative record needed? This really seems like trying to legislate basic interagency decision-making, which we have a track record of doing very well. Now, rather than be proactive, will we have to wait for a formal request from the Governor to try to fix something. What if NMFS or FWS and Reclamation can work something out – now do we need to wait for a meeting that only Interior can convene? ? Doesn't make any sense

SEC. 105. TEMPORARY OPERATIONAL FLEXIBILITY DURING PERIODS OF HIGH OUTFLOW.

(a) In general- Consistent with avoiding additional adverse effects upon listed fish species beyond those anticipated to occur through the implementation of authorized under the smelt and salmonid biological opinions and other environmental protections under subsection (d), the Secretaries shall implement temporary changes in the operating criteria for the biological opinions during days of high outflow as defined in subsection

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(b) that would improve water supplies for the Central Valley Project and the State Water Project.

(b) Days of high outflow. - Subsection (a) is in effect on any day or days that the California Department of Water Resources determines the daily Net Delta Outflow Index is at, or above, 12,000 cubic feet per second. [checking with BOR if this is the appropriate threshold] – see edited text

(c) Compliance With Endangered Species Act authorizations.- In carrying out this section, the Secretaries may continue to impose any requirements under the smelt and salmonid biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid additional adverse effects on a listed species beyond those anticipated to occur through the implementation of the smelt and salmonid biological opinions.

(d) Other environmental protections.-

(1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law, including State Water Resources Control Board Decision 1641, as it may be implemented in any given year.

(2) During the first flush of sediment into the Delta [need more technical definition] in each water year, and provided that such determination is based upon objective evidence, OMR flow may be managed at rates less negative than the highest negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 for a minimum duration to avoid movement of adult Delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants.

(3) This section shall not affect the application of the salmonid biological opinion from January 1st through June 15th April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those anticipated to occur through the implementation of the authorized under the smelt and salmonid biological opinions. In addition to any other actions to benefit water supply, the Secretary and the Secretary of Commerce shall consider allowing through-Delta water transfers to occur during this period.

(4) During operations under this section, the Secretary of the Interior, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a

Commented [A26]: This is far too open-ended and very troubling, and if retained should be tied back to effects “authorized, not merely “considered” Highly inconsistent with the very carefully structured OMR-Flex discussions we have been having regionally for two years, based on very specific real-time evaluations using best available science You can’t/shouldn’t legislate triggers This could be very harmful to species, water supplies, and upend great team work in the Region

Commented [A27]: •Sec 105(c), states that during periods of temporary operational flexibility, the Secretaries can only impose requirements of the BiOps if they determine that there are *additional* effects on listed species *beyond the range* of those considered under the BiOps This language is highly problematic and would be detrimental to Delta Smelt Even if effects are within the range considered in the BiOp, the Secretaries may need to impose BiOp requirements necessary to be sufficiently protective of Delta Smelt

Commented [A28]: Sec 105(d)(2), First flush only applies to RPA Component 1, not RPA Component 2 as the text states Also, there are triggers for portions of RPA Component 1, Action 1, that, when triggered, result in pre-determined limits to OMR flows These limits were determined necessary to be sufficiently protective of Delta Smelt Language in this sub-section would weaken these protections Finally, it is unclear what is meant by the term “objective evidence” The standard for ESA is the “best scientific and commercial data available” which was the standard used in development of the BiOp Is “objective evidence” a new standard? Who would determine whether or not evidence is “objective”?

Commented [A29]: Could describe as “During the conditions described in Action 1 of the smelt biological opinion...”

Commented [A30]: This is confusing as component 1, action 1 is a set rate of -2000 for 14 days/5 day running average of -2500 and component1, action 2 and component 2 (action 3) is a range of -1250 to -5000

If this is just about first flush I think it should just read Action 1 but there is no range associated with Action 1

Commented [A31]: What about the rest of the period of OMR management in the NMFS Biop? Jan 1- June 15th?

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Commented [A32]: Through-Delta transfers typically imply north-to-south transfers Given the time frame, transfers originating from the San Joaquin River basin seem more likely

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monitoring program and other data gathering to ensure incidental take levels are not exceeded, and to identify potential negative impacts, if any, and actions necessary to avoid or mitigate impacts of the temporary operational flexibility to species listed under the Endangered Species Act of 1973.

(5) During operations under this section, the Secretaries shall confer with the Director of the California Department of Fish and Wildlife regarding the potential impacts to species listed under the California Endangered Species Act that are not listed under the Endangered Species Act 1973.

(e) **Authority.**—The Secretaries' actions under this section are authorized by:

- (1) The flexibility in the smelt and salmonid biological opinions;
- (2) The emergency consultation provisions of the Endangered Species Act of 1973 and its implementing regulation at section 402.05, title 50, Code of Federal Regulations; and
- (3) This Act.

(f) .-Aftermath.-

At the conclusion of the environmental reviews required under this section, the Secretary of the Interior shall not reinitiate consultation on these adjusted operations if the effects on listed species of these operations under this section remain within those anticipated to occur through the implementation of the applicable smelt and salmonid biological opinions.

Commented [A33]: •Sec 105(d)(4). Funding for this monitoring program has not been identified in the draft legislative language. Also, the language in this sub-section says that the Secretary of the Interior, in coordination with the Fish Agencies “shall...ensure that incidental take levels are not exceeded.” While monitoring and data gathering should be coordinated by the Fish Agencies, it is the responsibility of Reclamation and DWR to ensure that incidental take levels are not exceeded

Commented [A34]: This section seems extremely odd Isn't this act the authority for all these actions? Concern that if not, then unclear on intent of Sec 303 No Redirected Adverse Impacts

Commented [A35]: No emergency consultation provision under ESA- only regs

Commented [A36]: What does “informal” mean here? There are very specific legal thresholds in the regulations for treating a consultation as informal (eg Not likely to adversely affect) We doubt they would be met here

SEC. 106. CALENDAR-BASED TRIGGERS.

“During the continuing drought, the Secretaries shall design, implement and evaluate on an experimental basis the use of real time monitoring triggers, based on the presence of juvenile migrating Winter-run Chinook salmon, for purposes of substituting the use of such triggers for the onset of Action IV.2.3 in order to achieve greater efficiencies in meeting multiple objectives including fish protection, salinity management and water supplies.

[
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Commented [A37]: This section is problematic because the RPA action (-500 starting Jan 1st) is designed to achieve minimal protection in most years. If there is a decision to switch to real time monitoring based on approach (which may be more effective), the on-set of OMR management may be triggered earlier than January 1st or later than January 1st, depending on hydrology and migration of winter-run, if similar multi-year protections are to be achieved as are in the current RPA. We are not opposed to creating new triggers, and it is regularly discussed at CAMT – but hasn’t ever risen to the top priority in that venue, which is co-chaired by the public water agencies. It needs to be done in a science-based way, and not made up on the fly

SEC. 107. PROGRESS REPORT.

Ninety days after the date of the enactment of this Act and every 90 days thereafter, the Secretaries shall provide a progress report describing the implementation of sections 102

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and 103 to the Committee on Natural Resources in the House of Representatives and the Committee on Energy and Natural Resources in the Senate.

SEC. 108. STATUS OF SURFACE STORAGE STUDIES.

One year after the date of the enactment of this Act, the Secretary of the Interior shall provide a progress report on the status of feasibility studies undertaken pursuant to clauses (i) and (ii) of section 103(d)(1)(A) of the Water Supply, Reliability, and Environmental Improvement Act (Public Law 108-361) to the Committee on Natural Resources in the House of Representatives and the Committee on Energy and Natural Resources in the Senate. The report shall include timelines for study completion, draft environmental impact statements, final environmental impact statements, and Records of Decision.

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TITLE II—ACTIONS TO BENEFIT FISH AND REFUGES

COMMENT: We will work over the next several days to provide recommendations on scientific studies and improvement projects that are of demonstrated high priority, sourcing them from the work of the Collaborative Adaptive Management Program (co-chaired by the water contractors and NOAA) and from the NOAA chinook recovery plan.

SEC. 201. ACTIONS TO BENEFIT ENDANGERED FISH POPULATIONS.

To increase protections of fish listed under the smelt and salmon biological opinions:

- a) Non-structural Blocking Barriers Barrier at the Delta Cross Channel Gates and other key Delta junctions

- (1) The Secretary of the Interior, in consultation with the Secretary of Commerce, shall:
- (A) report to Congress within 90 days of enactment of this Act on the current progress of evaluating non-structural blocking barriers at Deadhorse Island to prevent straying of endangered salmonids through the Delta Cross Channel Gates; and
- (B) report to Congress within 1 year of enactment of this Act on the effectiveness of such non-structural such blocking barriers in preventing straying of endangered salmonids.
- (2) In carrying out Paragraph (1), the Secretary of the Interior shall coordinate actions with the State Water Resources Control Board and the California Department of Fish and Wildlife.
- (3) AUTHORIZATION OF APPROPRIATIONS – There is authorized to be appropriated to carry out this section \$2,000,000 through fiscal year 2017.

- b) Gravel and Rearing Area Additions to the Upper Sacramento River –

- (1) The Secretary of the Interior, in consultation with the Secretary of Commerce, shall provide within 180 days of enactment of this Act:

- a. a report on the cost and effectiveness of additional gravel that were placed downstream of the Keswick Dam in 2013 and 2014 in improving salmon and steelhead spawning rates;
- b. a report on the feasibility of implementing gravel additions at additional locations on the mainstem Sacramento River to improve salmon and steelhead spawning rates, and the timetable for implementing any approved locations; and

Commented [A38]: Overall comment, These projects are random and would take away from carefully developed priorities in the Chinook recovery plan, and through active partnerships with entities in California on priority projects such as NCWA, GSSA and others. We strongly recommend that the Federal agencies work with their state counterparts to develop a short priority list of well vetted upstream projects. Could we suggest a list of projects? Or better yet, could high priority projects in the chinook recovery plan be funded through PCSRF? What about real-time genetic testing at state and federal facilities? Or research on temperature mediated pathogens and survival effects?

Commented [A39]: We recommend “non-structural Electronic doesn’t make any sense. Some parties have suggested electric barriers, which the fishery biologists are strongly opposed to. Non-structural will allow for bubble curtains, etc.

Commented [A40]: and other key Delta junctions

Commented [A41]: We do not support this, believing it to be a very low priority project not worth the time or money. Recommend making it generally applicable to “key suitable locations”

Commented [A42]: And DWR, DFM

Commented [A43]: And other key Delta junctions

Commented [A44]: In consultation with the Secretary of Commerce,

Commented [A45]: And steelhead

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- c. a report on the feasibility of constructing or restoring additional natural rearing areas in the mainstem Sacramento River to improve salmon and steelhead population recovery.

Commented [A46]: and steelhead

Commented [A47]: If explained in geo scope, and not limited to gravel, this could be useful

- (2) If the feasibility reports in Paragraph (1) determine that additions of gravel and natural rearing areas are feasible and beneficial for protecting and recovering fish populations, begin implementation of those additions within 1 year of the issuance of the feasibility reports.

- (3) In carrying out paragraphs (1) and (2), the Secretary of the Interior shall coordinate with the California Department of Fish and Wildlife and the Secretary of Commerce, t

- (4) AUTHORIZATION OF APPROPRIATIONS – There is authorized to be appropriated to carry out this section:

Commented [A48]: How will this be paid for?

- (A) \$2,000,000 for fiscal years 2016 and 2017;
(B) \$2,000,000 for fiscal years 2018 and 2019.

- c) **Alternative Hatchery Salmon Release Strategies** – The Secretary of the Interior, in consultation with the Secretary of Commerce, shall:

- (1) Evaluate the feasibility of alternative release strategies for hatchery-raised winter-run salmon to reduce mortality rates beyond those experienced currently, including alternative release locations, trucking options, or barging options, and pulse flows,

Commented [A49]: •Sec 201 (c). Winter-run Chinook salmon are only raised at Livingston Stone NFH, a conservation hatchery built and operated to aid recovery of endangered winter run. Consequently, the spawning, rearing and release strategies are designed to mimic as closely as possible the wild winter run that spawn in the river. Juveniles are released in the river where wild Chinook occur so they can experience outmigration conditions and survival similar to wild winter run chinook. This release strategy has served the program well and produced a quality conservation hatchery program. It would be counter to the purpose of the program to have hatchery winter-run juveniles survive at significantly higher rates than wild fish since hatchery fish could overwhelm the wild fish upon returning as adults. A pilot program could be conducted, but it would need to be designed to contribute to the recovery goals

- (2) Within X years of enactment of this Act, if feasible, implement a pilot program.

- (3) AUTHORIZATION OF APPROPRIATIONS – There are authorized to be appropriated to carry out this section:

- a. \$6,000,000 through fiscal year 2017;
b. \$3,000,000 total for fiscal years 2018, 2019, and 2020;

Commented [A50]: This should be structured similar to a) and b) as a feasibility report, prior to launching a pilot program

- d) **Reduce Predator Habitat** – within 2 years of enactment of this Act, the Secretary of Commerce and Secretary of the Interior shall implement a pilot program to:

- (1) Identify natural and artificial factors in the Sacramento River and the Sacramento-San Joaquin River Delta watershed that could be providing favorable predatory fish habitat for fish that prey on juvenile salmon;

Commented [A51]: My understanding is trucking and barging not feasible at this location for various reasons

- (2) Collect scientific data at those locations to determine if those natural or artificial factors are contributing to predation of endangered fish; and

Commented [A52]: Pulse flows may be an important component of improving hatchery survival and would not necessarily have a water cost

Commented [A53]: Too much money Need this money for other priorities for winter-run

Commented [A54]: •Sec 201 (d) and (e). Planning for these activities could be led by federal agencies, but little of the potential predator habitat or light sources are owned or operated, or even regulated by Federal agencies. Implementation likely limited to willing owners and operators

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(3) Provide recommendations on whether those natural or artificial factors that enable the formation or continuation of predatory fish habitat could be feasibly and effectively modified, in compliance with all applicable state and federal laws and regulations, to reduce predation.

(4) AUTHORIZATION OF APPROPRIATIONS – There are authorized to be appropriated to carry out this section:

- (A) \$2,000,000 for fiscal year 2016;
- (B) \$2,000,000 for fiscal year 2017;
- (C) \$4,000,000 for fiscal year 2018.

Commented [A55]: Again, way too much money for these studies There are far higher needs for these funds

e) **Eliminate / Reduce Lighting at In-River Structures** – The Secretary of the Interior and Secretary of Commerce:

- (1) Assess the effectiveness of lowering light intensity at artificial structures in the Sacramento-San Joaquin River Delta to reduce predation of endangered fish; and
- (2) Implement actions to lower light intensity at other artificial structures in the Delta if the assessment in Paragraph (1) determines that the action is effective in reducing predation.
- (3) In carrying out actions under paragraphs (1) and (2), the Secretary of the Interior and the Secretary of Commerce shall coordinate with the California Department of Fish and Wildlife and other relevant local and state authorities.
- (4) AUTHORIZATION OF APPROPRIATIONS – There is authorized to be appropriated to carry out this section \$3,000,000 through fiscal year 2018.

f) **Evaluate and Improve Delta Pump Fish Salvage System** – The Secretary of the Interior and Secretary of Commerce, shall:

- (1) evaluate and report to Congress within 1 year of enactment of this Act on alternatives to re-deposit salvaged salmon smolts and other fish from the Delta that would reduce predation losses, and to reduce predation at the existing fish salvage system.
- (2) In carrying out actions under paragraph (1), the Secretary of the Interior and Secretary of Commerce shall coordinate with the California Department of Fish and Wildlife.
- (3) AUTHORIZATION OF APPROPRIATIONS – There is authorized to be appropriated to carry out this section \$10,000,000 through fiscal year 2019.

Commented [A56]: Not sure what this scope is A lot of money

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- g) **Trap and Barge Pilot Project to Increase Survival Through the Delta** – The Assistant Administrator and the Commissioner shall, in collaboration with the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife, water agencies, and other interested parties, design, permit, implement and evaluate a pilot program to test the efficacy of an experimental trap and barge program to improve survival of juvenile salmonids emigrating from the San Joaquin watershed through the Delta:
- (1) Within 30 days of enactment, the Assistant Administrator and the Commissioner shall convene a working group of the relevant agencies and other interested parties through which to develop and execute a plan for the design, budgeting, implementation and evaluation of such a pilot program, utilizing existing expertise on such trap and barge programs as may be available. Such plan shall detail a schedule and budget for the program, and identify the responsible parties for each element of the program.

(2) The Assistant Administrator and the Commissioner shall seek to commence implementation of the pilot program in 2016 if possible.

(3) The Assistant Administrator and the Commissioner shall jointly report annually to the Senate Committees on the Environment and Public Works and Energy and Natural Resources and the House Committee on Natural Resources their progress in implementing this section, estimated survival rates through the Delta for both juvenile salmonids that were barged through the Delta and those that were not barged, and if survival rates are significantly higher for barged fish as compared to other outmigrating smolts, the Assistant Administrator's and Commissioner's recommendations regarding broadening the pilot program.

SECTION 202. PILOT PROGRAM TO PROTECT NATIVE ANADRAMOUS FISH IN THE STANISLAUS RIVER, THE DELTA, AND OTHER DELTA TRIBUTARIES.

(a) Non-native Predator Fish Removal Program on the Stanislaus River.-

(1) IN GENERAL-- The Assistant Administrator of the National Oceanic and Atmospheric Administration, NOAA Fisheries and Oakdale Irrigation District and the South San Joaquin Irrigation District, in consultation with the United States Fish and Wildlife Service and the California Department of Fish and Wildlife, shall jointly develop and implement a scientifically-based pilot program to remove non-native predator fish from the Stanislaus River not later than 6 months after the date of enactment of this Act. In implementing the [program]–

(A) STAFFING- By agreement between the Assistant Administrator and the participating districts, the pilot program may be conducted by any combination of district personnel, qualified private contractors, personnel of, on loan to, or otherwise assigned to NOAA Fisheries.

Commented [A57]: With all due respect, investing significant time and effort into a trap and haul program to circumvent the Delta appears directly contrary to efforts to make the Delta function well – one of the core co-equal goals

Commented [A58]: We recommend simplifying this to direct the fishery agencies to develop a pilot program working with the other districts

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(B) PARTICIPATION BY NOAA FISHERIES- In the event the districts elect to conduct the program using their own personnel or qualified private contractors, the Assistant Administrator is hereby authorized and retains the option to assign an employee of, on loan to, or otherwise assigned to NOAA Fisheries, to be present for all activities performed in the field. The districts shall pay 100 percent of the cost of such participation as specified in paragraph (2).

(C) TIMING OF AGREEMENT - The districts and the Assistant Administrator shall reach agreement on the work plan for the subsequent calendar year on or before October 15 of each calendar year of the pilot program.

(2) Funding.-

(A) CONTRIBUTED FUNDS - The Assistant Administrator is authorized to receive and expend contributed funds for the purposes for which the funds are contributed in a like manner as if said sums had been specifically appropriated for said purposes.

(B) ANNUAL FUNDING- The districts shall be responsible through contributed funds for 100 percent of the cost of the pilot program. On or before December 1 of each year of the pilot program, the Assistant Administrator shall submit to the districts an estimate of the cost to be incurred by the NOAA Fisheries in the following calendar year, if any.

(C) ACCOUNTING- On or before September 1 of each calendar year, the Assistant Administrator shall provide an accounting of the prior calendar year's expenses to the districts. If the estimate paid by the districts was less than the actual costs incurred by the NOAA Fisheries, the districts shall have until September 30 of that calendar year to pay the difference pursuant to subparagraph (A), or NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled. If the estimate paid by the districts was greater than the actual costs incurred by the NOAA Fisheries, then a credit shall be provided to the districts, which shall be deducted from the estimate payment the districts must make for the work performed by the NOAA Fisheries, if any, in the next calendar year.

(3) Reporting and Evaluation-

(A) IN GENERAL- On or before the 15th day of each month, the Assistant Administrator shall post on the website of the NOAA Fisheries a tabular summary of the raw data collected in the prior month.

(B) REPORT- On or before June 30 of the calendar year following the completion of the program, the Assistant Administrator and districts shall jointly submit a report for peer review that presents data, analyses, and findings of the pilot program and makes recommendations for further study and action.

(4) Permits Process- Not later than 180 days after filing of application to authorize the pilot program, the Secretary of the Interior and the Secretary of Commerce shall issue

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permits under section 10(a)(1) of the Endangered Species Act (16 U.S.C. 153(9)(a)(1)), for the performance of the pilot program.

(b) **Pilot Projects to Implement CALFED Invasive Species Program.** Not later than January 1, 2017, the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall begin pilot projects to implement the invasive species control program authorized pursuant to Section 103(d)(6)(A)(iv) of Public Law 108-361. The pilot projects shall:

- (1) seek to reduce invasive aquatic vegetation, predators, and other competitors which contribute to the decline of native listed pelagic and anadromous species that occupy the Sacramento and San Joaquin Rivers and their tributaries and the Sacramento-San Joaquin Bay-Delta; and
- (2) remove, reduce, or control the effects of species including: Asiatic clams, silversides, gobies, Brazilian water weed, largemouth bass, smallmouth bass, striped bass, crappie, bluegill, white and channel catfish, and brown bullheads.

(c) **Expedited Environmental Reviews.** To expedite these environmentally beneficial programs for the conservation of threatened and endangered species, the Secretaries shall consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this program.

SEC. 203. IMPROVED SCIENCE TO BETTER PROTECT ENDANGERED FISH.

COMMENT: Please see above note re the CAMP. We will provide some suggestions on authorizing high priority south Delta research.

a) **Delta smelt distribution study.—**

(1) **IN GENERAL.**— No later than January 1, 2016, contingent upon funding, the Secretary, in collaboration with Delta science partners, shall begin to implement a new targeted three-year sampling and monitoring study specifically designed to understand delta smelt abundance, distribution, and the types of habitat occupied by delta smelt during all life stages.

(2) **SAMPLING.**—The Delta smelt distribution study shall, at a minimum—

- (A) include recording water quality, meteorological, and tidal data;
- (B) be designed to understand delta smelt abundance, distribution, habitat use, and movements throughout the Bay Delta during all seasons;
- (C) consider areas not routinely sampled by existing monitoring programs, including wetland channels, near-shore water, depths below 35 feet, and shallow-water; and

Commented [A59]: •Sec 202(b). The invasive species pilot projects described in this section are immense efforts, requiring substantial new funding to implement. The likelihood that these efforts would be effective for most of the species listed is low even if a substantial new funding was available

Commented [A60]: This is an area where a lot of new funds are needed 10 million per year to support drought related monitoring and modeling that informs management decisions would be very helpful

Commented [A61]: •Sec 203(a). This subsection is overly prescriptive in the science to be undertaken. Science questions to be answered and addressed should be developed collaboratively among expert smelt biologists, while simultaneously minimizing the extent to which new sampling efforts might negatively affect the population that is at an historic low

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- (D) use the most biologically appropriate survey methods, including sampling gear suited to the type of sampling or monitoring.
- b) **Real-time monitoring.** During the period beginning on December 1, 2015 and ending March 31, 2016, and in each successive December through March period that this Act is in effect, if suspended sediment loads enter the Delta from the Sacramento River and the suspended sediment loads appear likely to raise turbidity levels in Old River north of the export pumps from values below 12 Nephelometric Turbidity Units (NTU) to values above 12 NTU, the Secretary shall—
- (1) conduct daily monitoring using appropriate survey methods at locations including, but not limited to, the vicinity of Station 902 to determine the extent that adult Delta smelt are moving with turbidity toward the export pumps; and
 - (2) use results from the monitoring surveys at locations including, but not limited to, the vicinity of Station 902 to determine how increased trawling can inform daily real-time Central Valley Project and State Water Project operations to minimize salvage while maximizing rates of water export consistent with applicable law (including regulations).

SEC. 204. ACTIONS TO BENEFIT REFUGES.

In fiscal year 2015-2016 and in any successive year when there is a declaration of drought emergency by the Governor of California, in addition to funding under section 3407 of the Central Valley Project Improvement Act (106 Stat. 4706), there is authorized to be appropriated to the Secretary \$2 million for the acceleration and completion of water infrastructure and conveyance facilities necessary to achieve full water deliveries to Central Valley wildlife refuges and habitat areas pursuant to section 3406(d) of that Act.

Commented [A62]: •Sec 203(b), Language regarding timing and location of monitoring is overly prescriptive. For example, it might be necessary to undertake monitoring in situations when turbidity wouldn't likely exceed 12 NTU (e.g. immediately before and during the onset of significant precipitation events or under baseline sampling conditions). And, depending on time of year and distribution of Delta Smelt, Station 902 might not be the most optimal location for monitoring. FWS would prefer to have flexibility in the timing and location of early warning monitoring so that information obtained from this monitoring can be most helpful in making management decisions

TITLE III—PROTECTION OF THIRD-PARTY WATER RIGHTS

SEC. 301. OFFSET FOR STATE WATER PROJECT.

(a) Implementation Impacts- The Secretary of the Interior shall confer with the California Department of Fish and Wildlife in connection with the implementation of this Act on potential impacts to any consistency determination for operations of the State Water Project issued pursuant to California Fish and Game Code section 2080.1.

(b) Additional yield- If, as a result of the application of this Act, the California Department of Fish and Wildlife requires take authorization under section 2081 for operation of the State Water Project in a manner that directly or indirectly results in reduced water supply to the State Water Project as compared with the water supply available under the smelt biological opinion and the salmonid biological opinion, and as a consequence of the Department's action, Central Valley Project yield south of the Delta is greater than it would have been absent the Department's actions, then that a portion of the additional yield shall be shared with the State Water Project and made available for delivery to State Water Project contractors to offset any losses resulting from the Department's action. In such case, the Central Valley Project shall be compensated for any conveyance and pumping costs.

Commented [A63]: Unclear why all should go to SWP instead of splitting the additional yield

Commented [A64]: This language covers the possibility that the CVP increase is greater than a SWP decrease

(c) Notification related to environmental protections- The Secretary of the Interior or the Secretary of Commerce shall notify the Director of the California Department of Fish and Wildlife regarding any changes in the manner in which the smelt biological opinion or the salmonid biological opinion is implemented and shall confirm that such changes are authorized under the applicable biological opinion.

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SEC. 302. AREA OF ORIGIN AND WATER RIGHTS PROTECTIONS.

- (a) In General- Nothing in this Act shall diminish, impair, or otherwise affect in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections, including, but not limited to, riparian water rights or rights to water appropriated prior to December 19, 1914, provided under California law. This Act does not limit or otherwise affect the application of California Water Code Sections 10505, 10505.5, 11128, 11460, and 11463, and Sections 12200 to 12220, inclusive, or any other provisions of California water rights law without regard to whether they are specifically set forth herein.

Commented [A65]: it is better to refer to Section 8 of Reclamation law when Congress refers to state laws, especially in the area of origin context

- [b) Contracts- With respect to individuals and entities with water rights on the Sacramento River, the mandates of this section may be met, in whole or in part, through a contract with the Secretary executed pursuant to section 14 of Public Law 76-260; 53 Stat. 1187 (43 U.S.C. 389) that is in conformance with the Sacramento River Settlement Contracts renewed by the Secretary in 2005.] [subject to ongoing conversations]

SEC. 303. NO REDIRECTED ADVERSE IMPACTS.

The Secretary of the Interior and the Secretary of Commerce shall ensure that actions taken to implement this Act do not result in the involuntary reduction of water supply to individuals or districts who have contracts for water with the State Water Project or the Central Valley Project, or other water users or purveyors organized under California law that obtain water based on other legal rights.

Commented [A66]: This language still seems problematic, especially with the new authority provisions highlighted earlier. It is confusing as to whether actions taken to implement the BiOps would be taken to implement this Act or ESA. This section seems to create big litigation risk, and doesn't define what involuntary reduction would be- from what baseline that is to be determined. It also seems to override the language in many contracts limiting liability for shortage due to legal obligation (like this act)

SEC. 304. ALLOCATIONS FOR SACRAMENTO VALLEY WATER SERVICE CONTRACTORS.

(a) Allocations-

- (1) IN GENERAL- Subject to paragraph (2) and subsection (b), the Secretary of the Interior shall make every reasonable effort in the operation of the Central Valley Project, to allocate water provided for irrigation purposes to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed, and at the potential risk of reduced allocations to Central Valley Project agricultural water service contractors south of the Delta, if necessary, in compliance with the following:

- (A) Not less than 100 percent of their contract quantities in a 'Wet' year.
(B) Not less than 100 percent of their contract quantities in an 'Above Normal' year.

Commented [A67]: This section doesn't seem to be consistent with the term of the Act, which would encompass 2016-2017 (even if not a drought year would likely be a recovery year which may impact operations) or successive drought years. Also seems very arbitrary. We do not support giving certain contractors legislative priority over others (although it probably does lift the SOD also but not Friant). We also reiterate that this section limits the very operational flexibility that has allowed for the optimization of water supplies under drought operations

Commented [A68]: It should be clearly noted that these mandated allocations to Sac River Basin Ag contractors could reduce allocations to the south-of-Delta CVP Ag contractors. And that Reclamation would confine that reduction to the south-of-Delta ag group. We also note there could be a potential 5th amendment takings claim by south of delta contractors

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- (C) Not less than 100 percent of their contract quantities in a 'Below Normal' year that is preceded by an 'Above Normal' or a 'Wet' year.
 - (D) Not less than 50 percent of their contract quantities in a 'Dry' year that is preceded by a 'Below Normal,' an 'Above Normal,' or a 'Wet' year.
 - (E) In all other years not identified herein, not less than twice the allocation percentage to south-of-Delta Central Valley Project agricultural water service contractors, up to 100 percent; provided, that nothing herein shall preclude an allocation to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed that is greater than twice the allocation percentage to South-of-Delta Central Valley Project agricultural water service contractors
- (2) CONDITIONS- The Secretary's actions under paragraph (a) shall be subject to--
- (A) the priority of individuals or entities with Sacramento River water rights, including those with Sacramento River Settlement Contracts, that have priority to the diversion and use of Sacramento River water over water rights held by the United States for operations of the Central Valley Project;
 - (B) the United States obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors; and
 - (C) the Secretary's obligation to make water available to managed wetlands pursuant to section 3406(d) of the Central Valley Project Improvement Act (Public Law 102-575).

(b) Protection of Municipal and Industrial Supplies- Nothing in subsection (a) shall be deemed to--

- (1) modify any provision of a water service contract that addresses municipal and industrial water shortage policies of the Secretary;
- (2) affect or limit the authority of the Secretary to adopt or modify municipal and industrial water shortage policies; or
- (3) affect or limit the authority of the Secretary to implement municipal and industrial water shortage policies.

Neither subsection (a) nor the Secretary's implementation of subsection (a) shall constrain, govern or affect, directly or indirectly, the operations of the Central Valley Project's American River Division or any deliveries from that Division, its units or its facilities.

(c) Allocations made pursuant to subsection (a) shall not affect allocations to Central Valley Project municipal and industrial water service contractors by either increasing or decreasing allocations to such contractors compared to allocations such contractors would have received absent subsection (a).

(d) No Effect on Allocations- This section shall not--

- (1) affect the allocation of water to Friant Division contractors; or

Commented [A69]: We do not believe there is a drought-related justification for this provision, and it is not consistent with any past practice

Commented [A70]: This section may also need to address the ESA related storage/coldwater management needs at Shasta

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(2) result in the involuntary reduction in contract water allocations to individuals or entities with contracts to receive water from the Friant Division.

(e) [Program for Water Rescheduling] The Secretary shall direct that the United States Bureau of Reclamation investigate a program to provide for the opportunity for existing Central Valley Project agricultural water service and refuge service contractors within the Sacramento River Watershed to reschedule water, provided for under their Central Valley Project contracts, from one year to the next provided, that the program is consistent with existing rescheduling guidelines as utilized by the Bureau of Reclamation for rescheduling water for Central Valley Project water service contractors that are located South of the Delta, including not impact other Project purposes or CVP water users.

Commented [A71]: This language presents a problem Implementation of a rescheduling program that is “consistent with existing south of Delta rescheduling” will have impacts to other CVP users Unless “consistent with” clearly means not impacting other CVP uses

(f) Definitions- In this section:

- (1) The term “existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed” means water service contractors within the Shasta, Trinity, and Sacramento River Divisions of the Central Valley Project, that have a water service contract in effect, on the date of the enactment of this section, that provides water for irrigation.
- (2) The year type terms used in subsection (a) have the meaning given those year types in the Sacramento Valley Water Year Type (40-30-30) Index.

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TITLE IV--MISCELLANEOUS PROVISIONS

SEC. 401. EFFECT ON EXISTING OBLIGATIONS.

Nothing in this Act

- (a) shall be deemed to authorize the Secretaries or any other Federal official to take any action or actions that either
 - (1) are likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical; or
 - (2) would cause additional adverse effects on listed species beyond those anticipated to occur through the implementation of the applicable smelt and salmonid biological opinions;
- (b) preempts or modifies any obligation of the United States under Federal reclamation law to operate the Central Valley Project in conformity with State law; or
- (c) affects or modifies any obligation under the Central Valley Project Improvement Act (title 34 of Public Law 102-575).

SEC. 402. LEVEL OF DETAILED REQUIRED FOR ANALYSIS.

In articulating the determinations required under this Act, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the time frame permitted for timely decision-making in response to changing conditions in the Delta.

SEC. 403. TERMINATION OF AUTHORITIES.

This Act shall expire on September 30, 2017, or the date on which the Governor of the State declares an end to the state of drought emergency, whichever is later.

Commented [A72]: •Sec 403. A hydrologically-based determination as to when the drought is over (e.g. “following an above-normal Water Year year”) would be a preferable trigger for expiration of this law, rather than a Governor-declared end to the drought. Also, the September date provided should be changed to September 2016 as a wet WY2016 could end the drought

Commented [A73]: This section and the appropriations sections don’t seem to be consistent

From: Johnny Amaral
Sent: Friday, May 15, 2015 9:29 AM
To: Catherine Karen; David Bernhardt; Dennis Cardoza; Denny Rehberg; Joe Findaro
Subject: Weekly call

Team,

I know I have mentioned this to some of you in the past, and at the risk of being a pain in the butt, I think we need to carve out about 15-20 minutes every Monday to go over the week ahead and to discuss "weekly opportunities". It seems like we're missing a chance to put all of our brilliant minds together (mine excluded) if we're only talking Friday mornings to discuss what has already happened.

I'm doing the same thing with the team in Sacramento, with the same intention in mind.

I usually get to the office on Monday mornings at 8:30 am PST. I can be available at any time to accommodate your schedules. 10 am CA time is right after lunch time in DC. So you can all be liquored up after lunch to ease the pain. Good?

Johnny

From: Bernhardt, David L.
Sent: Friday, May 15, 2015 9:33 AM
To: Johnny Amaral
CC: Catherine Karen; Dennis Cardoza; Denny Rehberg; Joe Findaro
Subject: Re: Weekly call

I can be available at 1 pm eastern.

David Bernhardt

On May 15, 2015, at 12:29 PM, Johnny Amaral <jamaral@westlandswater.org> wrote:

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Johnny

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From: Karen, Catherine
Sent: Friday, May 15, 2015 10:41 AM
To: DCardoza@foley.com; Johnny Amaral
CC: David Bernhardt; Denny Rehberg; Joe Findaro; Daley, Jane
Subject: RE: Weekly call

I can do 1 pm. Thank you
Catherin

CATHERINE KAREN
Counsel

Sidley Austin LLP
+1.202.736.8368
ckaren@sidley.com

-----Original Message-----

From: DCardoza@foley.com [mailto:DCardoza@foley.com]
Sent: Friday, May 15, 2015 1:04 PM
To: Johnny Amaral
Cc: Karen, Catherine; David Bernhardt; Denny Rehberg; Joe Findaro
Subject: Re: Weekly call

1pm Monday's works for me. Dennis

Congressman Dennis A. Cardoza
Foley & Lardner LLP
Suite 600
3000 K Street, NW<x-apple-data-detectors://0/0>
Washington, DC 20007-5109<x-apple-data-detectors://0/0>
Phone: 202.295-4015
Fax: 202.672.5399<tel:202.672.5399>
Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>>

Sent from my iPhone

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On May 15, 2015, at 12:29 PM, Johnny Amaral <jamaral@westlandswater.org<<mailto:jamaral@westlandswater.org>>> wrote:

Team,

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If you are not the intended recipient, please delete the e-mail and any attachments and notify us
immediately.

From: Tom Birmingham
Sent: Friday, May 15, 2015 11:34 AM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: Calendar-Based Triggers

John,

I suggest the following for section 106, Calendar-Based Triggers:

Notwithstanding the calendar based trigger described in Action IV.2.3 in the salmonid biological opinion Reasonable and Prudent Alternative, operations of the Central Valley Project and the State Water Project shall not be limited by Action IV.2.3. of the Reasonable and Prudent Alternative unless current monitoring data indicate that the actions described in the Reasonable and Prudent Alternative are reasonably required to avoid the impacts . . . [insert new language on standard].

Tom

From: Tom Birmingham
Sent: Friday, May 15, 2015 12:01 PM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: Transfer Window

John,

On the extended transfer window I suggest the following:

Extended window for transfers. Subject to the limitations on maximum transfer quantities described on page 230 of the delta smelt biological opinion, the Secretaries shall allow the period for exports for transfers to include October 1 through November 15, . . .

Tom

From: Tom Birmingham
Sent: Friday, May 15, 2015 2:07 PM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: Cross Channel Gates

John,

I suggest the following:

(a) In general- The applicable Secretary shall--

- (1) For the duration of the drought emergency, the Secretaries shall in close coordination with the California Department of Water Resources and the California Department of Fish and Wildlife evaluate through a pilot study or other means the ability to operate the Delta Cross Channel Gates diurnally or as otherwise may be suitable to protect out-migrating salmon, manage salinities in the Interior Delta, and enable Central Valley Project and State Water Project pumping. The Secretaries shall design, implement and evaluate such real time monitoring capabilities in the vicinity of the Delta Cross Channel to enable more effective real time operations of the Delta Cross Channel in order to meet these multiple objectives efficiency. Such a pilot project shall be designed and implemented in a manner that is consistent with the operational criteria and monitoring set forth in the California State Water Resources Control Board's Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions, effective January 31, 2014, or a successor order;

From: Tom Birmingham
Sent: Friday, May 15, 2015 2:37 PM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: RE: Cross Channel Gates

John,

Please note that I deleted the reference to the California Endangered Species Act in this language.

Tom

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Friday, May 15, 2015 2:07 PM
To: 'Watts, John (Feinstein)'
Cc: 'Bernhardt, David L.'
Subject: Cross Channel Gates

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From: Watts, John (Feinstein)
Sent: Friday, May 15, 2015 2:39 PM
To: Tom Birmingham
CC: 'Bernhardt, David L.'
Subject: RE: Cross Channel Gates

The State asked for this reference, based on the notion that while the DCC is a federal facility, it is part of the broader project that is subject to CESA. Do you feel strongly about deleting the CESA reference?

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Friday, May 15, 2015 5:37 PM
To: Watts, John (Feinstein)
Cc: 'Bernhardt, David L.'
Subject: RE: Cross Channel Gates

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and Permit Terms in Response to Drought Conditions, effective January 31, 2014, or a successor order;

From: Johnny Amaral
Sent: Friday, May 15, 2015 3:03 PM
To: 'Karen, Catherine'; DCardoza@foley.com
CC: 'David Bernhardt'; 'Denny Rehberg'; 'Joe Findaro'; 'Daley, Jane'
Subject: RE: Weekly call

Looks like 1pm EST works for almost everyone. Denny, will there be any Mondays when 1pm WILL work for you?

-----Original Message-----

From: Karen, Catherine [<mailto:ckaren@sidley.com>]
Sent: Friday, May 15, 2015 10:41 AM
To: DCardoza@foley.com; Johnny Amaral
Cc: David Bernhardt; Denny Rehberg; Joe Findaro; Daley, Jane
Subject: RE: Weekly call

I can do 1 pm. Thank you
Catherin

CATHERINE KAREN
Counsel

Sidley Austin LLP
+1.202.736.8368
ckaren@sidley.com

-----Original Message-----

From: DCardoza@foley.com [<mailto:DCardoza@foley.com>]
Sent: Friday, May 15, 2015 1:04 PM
To: Johnny Amaral
Cc: Karen, Catherine; David Bernhardt; Denny Rehberg; Joe Findaro
Subject: Re: Weekly call

1pm Monday's works for me. Dennis

Congressman Dennis A. Cardoza
Foley & Lardner LLP
Suite 600
3000 K Street, NW<x-apple-data-detectors://0/0> Washington, DC 20007-5109<x-apple-data-detectors://0/0>
Phone: 202.295-4015
Fax: 202.672.5399<tel:202.672.5399>
Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>>

Sent from my iPhone

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On May 15, 2015, at 12:29 PM, Johnny Amaral <jamaral@westlandswater.org<<mailto:jamaral@westlandswater.org>>> wrote:

Team,

I know I have mentioned this to some of you in the past, and at the risk of being a pain in the butt, I think we need to carve out about 15-20 minutes every Monday to go over the week ahead and to discuss “weekly opportunities”. It seems like we’re missing a chance to put all of our brilliant minds together (mine excluded) if we’re only talking Friday mornings to discuss what has already happened.

I’m doing the same thing with the team in Sacramento, with the same intention in mind.

I usually get to the office on Monday mornings at 8:30 am PST. I can be available at any time to accommodate your schedules. 10 am CA time is right after lunch time in DC. So you can all be liquored up after lunch to ease the pain. Good?

Johnny

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From: Watts, John (Feinstein)
Sent: Friday, May 15, 2015 3:24 PM
To: Tom Birmingham; Bernhardt, David L.
Subject: Current draft bill language that I sent to the State and federal agencies
Attachments: leg counsel draft 5-15-15.doc

1 Title: To provide short-term water supplies to drought-stricken California.

2

3

4 Be it enacted by the Senate and House of Representatives of the United States of America in
5 Congress assembled,

6 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

7 (a) Short Title.—This Act may be cited as the “California Emergency Drought Relief Act of
8 2015”.

9 (b) Table of Contents.—The table of contents for this Act is as follows:

10 Sec.1.Short title; table of contents.

11 Sec.2.Definitions.

12 **TITLE I—CALIFORNIA EMERGENCY DROUGHT RELIEF**

13 Sec.101.Operations under biological opinions.

14 Sec.102.Management of reverse flow under smelt biological opinion.

15 Sec.103.Promoting flexibility through voluntary water transfers.

16 Sec.104.Other emergency projects.

17 Sec.105.Temporary operational flexibility during periods of high outflow.

18 Sec.106.Calendar-based triggers.

19 Sec.107.Progress report.

20 **TITLE II—ACTIONS TO BENEFIT FISH AND REFUGES**

21 Sec.201.Actions to benefit threatened and endangered fish populations.

22 Sec.202.Pilot program to protect native anadromous fish in Stanislaus River, Delta, and other
23 Delta tributaries.

24 Sec.203.Improved science to better protect threatened and endangered fish.

25 Sec.204.Actions to benefit refuges.

26 **TITLE III—PROTECTION OF THIRD-PARTY WATER
27 RIGHTS**

28 Sec.301.Offset for State water project.

29 Sec.302.Area of origin and water rights protections.

30 Sec.303.No redirected adverse impacts.

31 Sec.304.Allocations for Sacramento Valley water service contractors.

32 **TITLE IV—MISCELLANEOUS PROVISIONS**

- 1 Sec.401.Effect on existing obligations.
- 2 Sec.402.Level of detail required for analysis.
- 3 Sec.403.Status of surface storage studies.
- 4 Sec.404.Corporation of Engineers dam water control review and reoperation.
- 5 Sec.405.Termination.

6 SEC. 2. DEFINITIONS.

7 In this Act:

8 (1) CENTRAL VALLEY PROJECT.—The term “Central Valley Project” has the meaning
9 given the term in section 3403 of the Central Valley Project Improvement Act (Public Law
10 102–575; 106 Stat. 4707).

11 (2) DELTA.—The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun
12 Marsh (as defined in sections 12220 of the California Water Code and section 29101 of the
13 California Public Resources Code (as in effect on the date of enactment of this Act)).

14 (3) SALMONID BIOLOGICAL OPINION.—The term “salmonid biological opinion” means the
15 biological opinion issued by the National Marine Fisheries Service’s on June 4, 2009,
16 biological and conference opinion on the long-term operation of the Central Valley Project
17 and the State Water Project, including the operative incidental take statement associated
18 with that opinion.

19 (4) SECRETARIES.—The term “Secretaries” means—

- 20 (A) the Secretary of Commerce; and
21 (B) the Secretary of the Interior.

22 (5) SMELT BIOLOGICAL OPINION.—The term “smelt biological opinion” means the
23 December 15, 2008 Biological Opinion on the long term operational criteria and plan for
24 coordinated operation of the Central Valley Project and the State Water Project issued by
25 the United States Fish and Wildlife Service on December 15, 2008, including the operative
26 incidental take statement associated with that opinion.

27 (6) STATE.—The term “State” means the State of California.

28 (7) STATE WATER PROJECT.—The term “State Water Project” means the water project
29 described in chapter 5 of part 3 of division 6 of the California Water Code (sections 11550
30 et seq. (as in effect on the date of enactment of this Act)) and operated by the California
31 Department of Water Resources.

32 TITLE I—CALIFORNIA EMERGENCY DROUGHT RELIEF

33 SEC. 101. OPERATIONS UNDER BIOLOGICAL OPINIONS.

34 The Secretaries shall—

- 35 (1) direct the operations of the Central Valley Project; and
36 (2) allow State Water Project operations to provide the maximum practicable supply of

- 1 water under current hydrologic conditions—
2 (A) operating within the smelt biological opinion and the salmonid biological
3 opinion;
4 (B) based on improved scientific understanding information and experience gained
5 since the adoption of the smelt biological opinion and the salmonid biological opinion
6 (such as management and monitoring of turbidity to protect Delta smelt and water
7 supplies simultaneously and improved understanding of salmon migration behaviors);
8 (C) maximizing the flexibility in the smelt biological opinion and the salmonid
9 biological opinion;
10 (D) consistent with applicable State and Federal law (including regulations); and
11 (E) subject to the limitations imposed under sections 302 and 303.

12 SEC. 102. MANAGEMENT OF REVERSE FLOW UNDER 13 SMELT BIOLOGICAL OPINION.

14 (a) In General.—In implementing the provisions of the smelt biological opinion,, or any
15 successor biological opinion, pertaining to management of reverse flow in the Old and Middle
16 Rivers, the Secretaries shall not restrict export pumping rates to achieve a reverse flow rate in
17 Old and Middle Rivers that is less negative than the most highest negative reverse flow rate
18 described in Reasonable and Prudent Alternative Component 1 and Component 2, absent a
19 determination based on current scientific data that a less-negative reverse flow rate is reasonably
20 required to avoid adverse impacts beyond those anticipated to occur through implementation of
21 the smelt biological opinion pursuant to section 401(a) to avoid adverse impacts beyond those
22 considered under the smelt biological opinion.

23 (b) Written Explanation.—Any determination to restrict export pumping rates to achieve a
24 reverse flow rate in Old and Middle Rivers less negative than the most highest negative reverse
25 flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 shall
26 be—

- 27 (1) explained in writing, including an explanation of the data examined and the
28 connection between those data and the choice made; and
29 (2) posted on the United States Fish and Wildlife Service website within 72 hours, if
30 practicable.

31 SEC. 103. PROMOTING FLEXIBILITY THROUGH 32 VOLUNTARY WATER TRANSFERS.

- 33 (a) Inflow/export Ratio.—
34 (1) IN GENERAL.—The Secretaries shall—
35 (A) in a timely manner, evaluate any proposal to increase flow in the San Joaquin
36 River through a voluntary sale, transfer, or exchange of water from an agency with
37 rights to divert water from the San Joaquin River or its tributaries; and
38 (B) adopt a 1:1 inflow to export ratio for the increment of increased flow, as

1 measured as a 3-day running average at Vernalis during the period from April 1
2 through May 31, that results from the voluntary sale, transfer, or exchange unless the
3 Secretaries demonstrate that a 1:1 inflow to export ratio for that increment of increased
4 flow ~~will cause impacts on listed species beyond those anticipated to occur through the
5 implementation of the salmonid biological opinion would be inconsistent with section
6 401(a) will cause adverse impacts on the listed species beyond those considered under
7 the salmonid biological opinion.~~

8 (2) REQUIREMENTS.—Any individual sale, transfer, or exchange using a 1:1 inflow to
9 export ratio adopted under the authority of this section may only proceed if—

10 (A) the Secretary of the Interior determines that the environmental effects of the
11 proposed sale, transfer, or exchange are consistent with effects permissible under
12 applicable law (including regulations);

13 (B) Delta conditions are suitable to allow movement of the acquired, transferred, or
14 exchanged water through the Delta consistent with the Central Valley Project's and the
15 State Water Project's permitted water rights; and

16 (C) such voluntary sale, transfer, or exchange of water results in flow that is in
17 addition to flow that otherwise would occur in the absence of the voluntary sale,
18 transfer, or exchange.

19 (b) Extended Window for Transfers.—Subject to the limitations on maximum transfer
20 ~~amounts quantities described in the smelt biological opinion~~, the Secretaries shall allow the
21 period for exports for transfers to include October 1 through November 15, if the following
22 conditions are met:

23 (1) The Secretary of the Interior determines that the environmental effects of the export
24 of transfers are consistent with effects permissible under applicable law (including
25 regulations).

26 (2) Delta conditions are suitable to allow the export for transfers consistent with
27 conditions imposed by Central Valley Project and the State Water Project water right
28 permits or licenses.

29 (3) The transfer—

30 (A) will not violate any Federal or State law; and

31 (B) will have no significant adverse effect on—

32 (i) the ability of the Secretary to deliver water pursuant to Central Valley
33 Project contractual obligations or fish and wildlife obligations under the Central
34 Valley Project Improvement Act (Public Law 102-575; 106 Stat. 4706); or

35 (ii) the ability of the California Department of Water Resources to deliver water
36 pursuant to State Water Project contractual obligations ~~because of limitations in
37 conveyance or pumping capacity.~~

38 (c) Permitting.—The Secretaries shall complete all requirements under the National
39 Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of
40 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on water transfer requests
41 associated with voluntarily fallowing nonpermanent crops in the State, using the shortest

1 practicable process provided under applicable law (including regulations).

2 SEC. 104. OTHER EMERGENCY PROJECTS.

3 (a) In General.—The applicable Secretaries shall—

4 (1) ~~For the duration of the drought emergency, the Secretaries shall, in close coordination~~
5 ~~with the California Department of Water Resources and the California Department of Fish~~
6 ~~and Wildlife, evaluate through a pilot study or other means the ability to operate the Delta~~
7 ~~Cross Channel Gates diurnally or as otherwise may be suitable to protect out-migrating~~
8 ~~salmon, manage salinities in the Interior Delta, and enable Central Valley Project and State~~
9 ~~Water Project pumping. The Secretaries shall design, implement and evaluate such real~~
10 ~~time monitoring capabilities in the vicinity of the Delta Cross Channel to enable more~~
11 ~~effective real time operations of the Delta Cross Channel in order to meet these multiple~~
12 ~~objectives efficiently. Such a pilot project shall be designed and implemented in a manner~~
13 ~~that is authorize and implement actions to ensure that the Delta Cross Channel Gates remain~~
14 ~~open to the maximum extent practieable using the best available science and findings from~~
15 ~~the United States Geological Survey on diurnal behavior of juvenile salmonids, timed to~~
16 ~~maximize the peak flood tide period and provide water supply and water quality benefits,~~
17 ~~consistent with the California Endangered Species Act (California Fish and Game Code~~
18 ~~sections 2050 through 2116) and operational criteria and monitoring set forth in the~~
19 ~~document of the California State Water Resources Control Board entitled "Order Approving~~
20 ~~a Temporary Urgency Change in License and Permit Terms in Response to Drought~~
21 ~~Conditions", with an effective date of January 31, 2014 (or a successor order);~~

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22 (2)(A) issue all necessary permit decisions under the authority of the Secretaries using the
23 shortest practicable process provided under applicable law (including regulations) to place
24 and use temporary barriers or ~~structures~~~~operable gates~~ in Delta channels to improve water
25 quantity and quality; and

26 (B) ~~work with~~~~advise~~ potential permit applicants described in subparagraph (A) ~~and the~~
27 ~~relevant state authorities on design and construction strategies regarding ways to minimize~~
28 ~~any adverse effects from the design of the proposed temporary barriers or structures, and~~
29 ~~expedite the timely completion of any necessary environmental reviews consistent with~~
30 ~~applicable law operations of gates that would not trigger formal consultations under section~~
31 ~~7 of the Endangered Species Act of 1973 (16 U.S.C. 1536);~~

32 (3) allow any north-of-Delta agricultural water service or north-of-Delta refuge service
33 contractor with unused Central Valley Project water to take delivery of that unused water
34 through April 15 of the contract year immediately following the contract year in which the
35 water was allocated, if—

36 (A) the contractor requests the extension; and

37 (B) the requesting contractor certifies that, without the extension, the contractor
38 would have insufficient supplies to adequately meet water delivery obligations; and

39 (4) create partnerships to implement instream and offsite projects in the Delta and
40 upstream in the Sacramento River and San Joaquin basins ~~for the benefit of species listed as~~
41 ~~threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et~~
42 ~~seq.)—~~

- 1 (A) including projects for—
2 (i) important side channel, riparian, inter-tidal, and floodplain habitats for fish
3 reproduction and rearing;
4 (ii) fish screens; and
5 (iii) operational and other habitat improvements—that—

6 (H) offset the effects on species listed as threatened or endangered under
7 the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to actions
8 carried out pursuant to this Act; and

- 9 (B) that shall be coordinated to the maximum extent practicable with the projects
10 and activities of—

- 11 (i) the California Department of Water Resources;
12 (ii) the California Department of Fish and Wildlife; and
13 (iii) other non-Federal entities.

14 (b) Accelerated Project Decision and Elevation.—

15 (1) IN GENERAL.—On receipt of a request of the Governor of the State, the heads of
16 Federal agencies shall use the expedited procedures under this subsection to make final
17 decisions relating to a project or operation to provide additional water supplies or address
18 emergency drought conditions pursuant to subsection (a) and section 102, including—

- 19 (A) water transfers; and
20 (B) the placement of temporary rock barriers.

21 (2) REQUEST FOR RESOLUTION.—

22 (A) IN GENERAL.—On receipt of a request of the Governor of the State, the Secretary
23 of Commerce, or the head of another Federal agency responsible for carrying out a
24 review of a project, as applicable, the Secretary of the Interior shall convene a final
25 project decision meeting with the heads of all relevant Federal agencies to decide
26 whether to approve a project to provide emergency water supplies or address
27 emergency drought conditions.

28 (B) MEETING.—The Secretary of the Interior shall convene a meeting requested
29 under subparagraph (A) by not later than 7 days after receiving a meeting request
30 described in that subparagraph.

31 (3) NOTIFICATION.—On receipt of a request for a meeting under this subsection, the
32 Secretary of the Interior shall submit to the heads of all relevant Federal agencies a notice of
33 the request, including a description of—

- 34 (A) the project to be reviewed; and
35 (B) the date of the meeting.

36 (4) DECISION.—Not later than 10 days after the date on which a meeting is requested
37 under paragraph (2), the head of each relevant Federal agency shall issue a final decision on
38 the project, in writing.

1 (5) MEETING CONVENED BY SECRETARY.—The Secretary of the Interior may convene a
2 final project decision meeting under this subsection at any time, at the discretion of the
3 Secretary, regardless of whether a meeting is requested under paragraph (2).

4 (6) APPLICABILITY.—The provisions of this subsection shall only apply to the extent they
5 are consistent with applicable law.

6 SEC. 105. TEMPORARY OPERATIONAL FLEXIBILITY
7 DURING PERIODS OF HIGH OUTFLOW.

8 (a) In General.—Consistent with avoiding additional adverse effects upon listed fish species
9 beyond those anticipated to occur through the implementation of the smelt and salmonid
10 biological opinions section 401(a) avoiding additional adverse effects on listed fish species
11 beyond those considered under the smelt biological opinion, the salmonid biological opinion, and
12 other environmental protections under subsection (c), the Secretaries shall implement
13 temporary changes in the operating criteria for the smelt biological opinion and the salmonid
14 biological opinion during days of high outflow (as defined in subsection (b)) that would improve
15 water supplies for the Central Valley Project and the State Water Project.

16 (b) Days of High Outflow.—Subsection (a) is in effect on any day or days that the California
17 Department of Water Resources determines that the Net Delta Outflow Indexe daily average
18 river flow of the Saeramento River is at or above 135,000 cubic feet per second, as measured at
19 the Saeramento River at Freeport gauge maintained by the United States Geological Survey.

20 (c) Compliance With Endangered Species Act Authorizations.—In carrying out this section,
21 the Seeretaries may continue to impose any requirements under the smelt biological opinion and
22 the salmonid biological opinion during any period of temporary operational flexibility, as the
23 Seeretaries determine are reasonably necessary to avoid additional adverse effects on a listed
24 species beyond the range of those considered under the smelt biological opinion and the
25 salmonid biogical opinion.

26 (1) IN GENERAL.—The Secretaries' actions under this section shall be consistent with
27 applicable regulatory requirements under State law, including State Water Resources
28 Control Board Decision 1641, as it may be implemented in any given year.

29 (2) FIRST FLUSH OF SEDIMENT OMR FLOW.—During the conditions described in Action 1
30 of the smelt biological opinion (otherwise known as the “first flush of sediment out of the
31 Delta”)[Client note: need more technical definition] in each water year, and provided that
32 such determination is based upon objective evidence, the Secretary of the Interior may
33 manage [Old and Middle River] flow may be managed at rates less negative than the
34 highest negative reverse flow rate described in Reasonable and Prudent Alternative
35 Component 1 and Component 2 for a minimum duration to avoid movement of adult Delta
36 smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to
37 increase entrainment at Central Valley Project and State Water Project pumping plants or
38 otherwise harm the Delta smelt.

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39 (3) EFFECT OF SECTION.—This section shall not affect the application of the salmonid
40 biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that
41 some or all of such applicable requirements may be adjusted during this time period to
42 provide emergency water supply relief without resulting in additional adverse effects.

1 beyond those anticipated to occur through the implementation of the smelt and salmonid
2 biological opinions.

3 In addition to any other actions to benefit water supply, the Secretary and the Secretary of
4 In addition to any other actions to benefit water supply, the Secretary
5 and the Secretary of Commerce shall consider allowing water transfers to
6 occur during this period.

7 (4) ~~MONITORING AND DATA GATHERING.~~ During operations under this section, the
8 Secretary of the Interior, in coordination with the United States Fish and Wildlife Service,
9 the National Marine Fisheries Service, and the California Department of Fish and Wildlife,
10 shall undertake a monitoring program and other data gathering to ensure incidental take
11 levels are not exceeded, and to identify potential negative impacts, if any, and actions
12 necessary to avoid or mitigate impacts of the temporary operational flexibility to species
13 listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

14 (d)(e) Authority.—The Secretaries' actions under this section are authorized by—

- 15 (1) the flexibility in the smelt biological opinion and the salmonid biological opinion;
16 (2) the emergency consultation provisions of the Endangered Species Act's of 1973 (16
17 U.S.C. 1531 et seq.) and the implementing regulation contained in section 402.05 of title 50,
18 Code of Federal Regulations (as in effect on the date of enactment of this Act); and
19 (3) this Act.

20 (e) Conclusion Aftermath.—At the conclusion of the ~~informal consultation actions~~ under this
21 section, the Secretary of the Interior shall not reinitiate consultation on those adjusted operations
22 if the effects on listed species of those operations under this section remain within those
23 considered under the smelt biological opinion and the salmonid biological opinion.

24 SEC. 106. CALENDAR-BASED TRIGGERS.

25 Due to the continuing drought, the Secretaries shall design, implement and evaluate on an
26 experimental basis the use of real-time monitoring triggers, based on the presence of juvenile
27 migrating Winter-run Chinook salmon, for purposes of substituting the use of such triggers for
28 the onset of Action IV.2.3 Notwithstanding any calendar based trigger described in the
29 reasonable and prudent alternative of the salmonid biological opinion in order to achieve greater
30 efficiencies in meeting multiple objectives including fish protection, salinity management and
31 water supplies, the operations of the Central Valley Project and the State Water Project shall not
32 be limited by that reasonable and prudent alternative unless current monitoring data indicate that
33 the actions described in the reasonable and prudent alternative are reasonably required to avoid
34 the impacts identified by the salmonid biological opinion.

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35 SEC. 107. PROGRESS REPORT.

36 Not later than 90 days after the date of enactment of this Act, and not less frequently than once
37 every 90 days thereafter, the Secretaries shall submit to the Committee on Energy and Natural
38 Resources of the Senate and the Committee on Natural Resources of the House of
39 Representatives a progress report describing the implementation of sections 102, ~~and~~ 103, 104
40 and 105.

1 **TITLE II—ACTIONS TO BENEFIT FISH AND REFUGES**
2 **SEC. 201. ACTIONS TO BENEFIT THREATENED AND**
3 **ENDANGERED FISH POPULATIONS.**

4 (a) Non-StructuralElectronic Blocking Barriers at Delta Cross Channel Gates and Other Key
5 Delta Junctions.—

6 (1) IN GENERAL.—To increase protections of fish listed under the smelt biological
7 opinion and the salmonid biological opinion, the Secretary of the Interior, in consultation
8 with the Secretary of Commerce, shall submit to Congress—

9 (A) by not later than 90 days after the date of enactment of this Act, a report
10 describing the current progress of evaluating non-structuralelectronic blocking barriers
11 at Deadhorse Island and other locations to prevent straying of endangered salmonids
12 through the Delta Cross Channel Gates and other key Delta junctions; and

13 (B) by not later than 1 year after the date of enactment of this Act, a report
14 describing the effectiveness of the electronic blockingnon-structural barriers described
15 in subparagraph (A) in preventing straying of endangered salmonids.

16 (2) COORDINATION.—In carrying out paragraph (1), the Secretary of the Interior shall
17 coordinate with the California Water Resources Control Board and the California
18 Departments of Fish and Wildlife and Water Resources.

19 (3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry
20 out this subsection \$2,000,000 for the period of fiscal years 2015 through 2019.

21 (b) Gravel and Rearing Area Additions to Upper Sacramento River.—

22 (1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the
23 Secretary of the Interior, in consultation with the Secretary of Commerce, shall submit to
24 Congress—

25 (A) a report on the cost and effectiveness of additional gravel that was placed
26 downstream of the Keswick Dam in 2013 and 2014 in improving salmon spawning
27 rates;

28 (B) a report on the feasibility of implementing gravel additions at additional
29 locations to improve salmon and steelhead spawning rates, including the timetable for
30 implementing any approved locations; and

31 (C) a report on the feasibility of constructing or restoring additional natural rearing
32 areas in the upper mainstem Sacramento River to improve salmon and steelhead
33 population recovery.

34 (2) COMMENCEMENT.—If the Secretary of the Interior determines, in the feasibility
35 reports described in paragraph (1), that additions of gravel and natural rearing areas are
36 feasible and beneficial for protecting and recovering fish populations, the Secretary shall
37 commence implementation of those additions by not later than 1 year after the date of
38 submission of the feasibility reports.

39 (3) COORDINATION.—In carrying out paragraphs (1) and (2), the Secretary of the Interior

1 shall coordinate with the California Department of Fish and Wildlife and the Secretary of
2 Commerce.

3 (4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry
4 out this subsection \$4,000,000 for the period of fiscal years 2015 through 2019.

5 (c) Alternative Hatchery Salmon Release Strategies.—

6 (1) IN GENERAL.—The Secretary of the Interior, in consultation with the Secretary of
7 Commerce, shall—

8 (A) establish pilot programs to test alternative release strategies for hatchery-raised,
9 winter-run salmon to reduce mortality rates beyond those in effect on the date of
10 enactment of this Act, including alternative release locations, trucking options, or
11 barging options; and

12 (B) not later than 3 years after the date of enactment of this Act, and annually
13 thereafter, submit to Congress reports regarding the progress and results of the pilot
14 programs under subparagraph (A), including recommendations on whether those pilot
15 programs should be continued.

16 (2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry
17 out this subsection \$9,000,000 for the period of fiscal years 2015 through 2019.

18 (d) Reduce Predator Habitat.—

19 (1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the
20 Secretaries shall implement a pilot program—

21 (A) to identify natural and artificial factors in the Sacramento River and the
22 Sacramento-San Joaquin River Delta watershed that could be providing favorable
23 predatory fish habitat for fish that prey on juvenile salmon;

24 (B) to collect scientific data at those locations to determine whether those natural or
25 artificial factors are contributing to predation of endangered fish; and

26 (C) to provide recommendations on whether those natural or artificial factors that
27 enable the formation or continuation of predatory fish habitat could be feasibly and
28 effectively modified, in compliance with all applicable State and Federal laws
29 (including regulations), to reduce predation.

30 (2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry
31 out this subsection \$8,000,000 for the period of fiscal years 2015 through 2019.

32 (e) Eliminating or Reducing Lighting at In-river Structures.—

33 (1) IN GENERAL.—The Secretaries shall—

34 (A) assess the effectiveness of lowering light intensity at artificial structures in the
35 Sacramento-San Joaquin River Delta to reduce predation of endangered fish; and

36 (B) implement actions to lower light intensity at other artificial structures in the
37 Delta if the assessment under subparagraph (A) results in a determination that the
38 action is effective in reducing predation.

39 (2) COORDINATION.—In carrying out paragraph (1), the Secretaries shall coordinate with

- 1 the California Department of Fish and Wildlife and other relevant local and State
2 authorities.
- 3 (3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry
4 out this subsection \$3,000,000 for the period of fiscal years 2015 through 2019.
- 5 (f) Evaluate and Improve Delta Pump Fish Salvage System.—
- 6 (1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the
7 Secretaries shall evaluate and submit to Congress a report that describes alternatives—
- 8 (A) to redeposit salvaged salmon smolts and other fish from the Delta that would
9 reduce predation losses; and
- 10 (B) to reduce predation at the existing fish salvage system.
- 11 (2) COORDINATION.—In carrying out actions under paragraph (1), the Secretaries shall
12 coordinate with the California Department of Fish and Wildlife.
- 13 (3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry
14 out this subsection \$10,000,000 for the period of fiscal years 2015 through 2019.
- 15 (g) Trap and Barge Pilot Project to Increase Fish Survival Through the Delta.—
- 16 (1) PILOT PROGRAM.—
- 17 (A) IN GENERAL.—The ~~f~~Assistant Administrator for Fisheries of the National
18 Marine Fisheries Service~~_____~~ and the ~~f~~Commissioner of Reclamation~~_____~~, in
19 collaboration with the United States Fish and Wildlife Service, the California
20 Department of Fish and Wildlife, applicable water agencies, and other interested
21 parties, shall design, permit, implement, and evaluate a pilot program to test the
22 efficacy of an experimental trap and barge program to improve survival of juvenile
23 salmonids emigrating from the San Joaquin watershed though the Delta.
- 24 (B) PLAN.—
- 25 (i) WORKING GROUP.—Not later than 30 days after the date of enactment of this
26 Act, ~~f~~the Assistant Administrator and the Commissioner~~_____~~ shall convene a working
27 group, to be comprised of representatives of relevant agencies and other interested
28 parties, to develop and execute a plan for the design, budgeting, implementation,
29 and evaluation of the pilot program under this paragraph using such existing
30 expertise on trap and barge programs as may be available.
- 31 (ii) REQUIREMENTS.—The plan under this subparagraph shall—
- 32 (I) include a schedule and budget for the pilot program; and
- 33 (II) identify the responsible parties for each element of the program.
- 34 (C) IMPLEMENTATION.—The Assistant Administrator and the Commissioner shall
35 seek to commence implementation of the pilot program under this paragraph during
36 calendar year 2016, if practicable.
- 37 (D) REPORTS.—Not less frequently than once each calendar year, the ~~f~~Assistant
38 Administrator and the Commissioner~~_____~~ shall jointly submit to the Committees on
39 Environment and Public Works and Energy and Natural Resources of the Senate and

1 the Committee on Natural Resources of the House of Representatives a report that
2 describes—

- 3 (i) progress made in implementing this subsection;
4 (ii) estimated survival rates through the Delta for both juvenile salmonids that
5 were barged through the Delta and those that were not barged; and
6 (iii) if the survival rates described in clause (ii) are significantly higher for
7 barged fish, as compared to other outmigrating smolts, recommendations
8 regarding broadening the pilot program.

9 (2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry
10 out this subsection \$32,000,000 for the period of fiscal years 2015 through 2019.

11 SEC. 202. PILOT PROGRAM TO PROTECT NATIVE 12 ANADRAMOUS FISH IN STANISLAUS RIVER, DELTA, 13 AND OTHER DELTA TRIBUTARIES.

14 (a) Nonnative Predator Fish Removal Program on Stanislaus River.—

15 (1) IN GENERAL.—The Assistant Administrator for Fisheries of the National Marine
16 Fisheries Service (referred to in this section as the “Assistant Administrator”) and the
17 Oakdale Irrigation District and South San Joaquin Irrigation District (referred to in this
18 section as the “participating districts”), in consultation with the United States Fish and
19 Wildlife Service, and the California Department of Fish and Wildlife, and appropriate non-
20 governmental organizations, shall jointly develop and implement a scientifically based pilot
21 program to remove nonnative predator fish from the Stanislaus River not later than 180 days
22 after the date of enactment of this Act.

23 (2) REQUIREMENTS.—In implementing the program, the following requirements shall
24 apply:

25 (A) STAFFING.—By agreement between the Assistant Administrator and the
26 participating districts, the pilot program may be conducted by any combination of
27 participating district personnel, qualified private contractors, and personnel of, on loan
28 to, or otherwise assigned to the National Marine Fisheries Service.

29 (B) PARTICIPATION BY NATIONAL MARINE FISHERIES SERVICE.—In the event the
30 participating districts elect to conduct the program using their own personnel or
31 qualified private contractors, the Assistant Administrator has the option to assign an
32 employee of, on loan to, or otherwise assigned to the National Marine Fisheries
33 Service, to be present for all activities performed in the field. The districts shall pay
34 100 percent of the cost of such participation as specified in paragraph (3).

35 (C) TIMING OF AGREEMENT.—The participating districts and the Assistant
36 Administrator shall reach agreement on the work plan for the subsequent calendar year
37 on or before October 15 of each calendar year of the pilot program.

38 (3) FUNDING.—

39 (A) CONTRIBUTED FUNDS.—The Assistant Administrator is authorized to receive and

1 expend contributed funds for the purposes for which the funds are contributed in a like
2 manner as if said sums had been specifically appropriated for said purposes.

3 (B) ANNUAL FUNDING.—The participating districts shall be responsible through
4 contributed funds for 100 percent of the cost of the pilot program. On or before
5 December 1 of each year of the pilot program, the Assistant Administrator shall submit
6 to the districts an estimate of the cost to be incurred by the National Marine Fisheries
7 Service in the following calendar year, if any.

8 (C) ACCOUNTING.—On or before September 1 of each calendar year, the Assistant
9 Administrator shall provide an accounting of the prior calendar year's expenses to the
10 participating districts. If the estimate paid by the participating districts was less than
11 the actual costs incurred by the National Marine Fisheries Service, the participating
12 districts shall have until September 30 of that calendar year to pay the difference
13 pursuant to subparagraph (A), or the National Marine Fisheries Service shall have no
14 obligation to conduct the pilot program activities otherwise scheduled. If the estimate
15 paid by the districts was greater than the actual costs incurred by the National Marine
16 Fisheries Service, then a credit shall be provided to the participating districts, which
17 shall be deducted from the estimate payment the participating districts shall make for
18 the work performed by the National Marine Fisheries Service, if any, in the next
19 calendar year.

20 (4) REPORTING AND EVALUATION.—

21 (A) IN GENERAL.—On or before the 15th day of each month, the Assistant
22 Administrator shall post on the website of the National Marine Fisheries Service a
23 tabular summary of the raw data collected in the prior month.

24 (B) REPORT.—On or before June 30 of the calendar year following the completion
25 of the program, the Assistant Administrator and participating districts shall jointly
26 submit a report for peer review that presents data, analyses, and findings of the pilot
27 program and makes recommendations for further study and action.

28 (5) PERMITS PROCESS.—

29 (A) Not later than 180 days after filing of application to authorize the pilot program,
30 the Secretaries shall issue permits under section 10(a)(1) of the Endangered Species Act
31 (16 U.S.C. 1539(a)(1)), for the performance of the pilot program.

32 (B) The Secretaries and the participating districts shall also comply with any applicable
33 requirements under state law.

34 (b) Pilot Projects to Implement CALFED Invasive Species Program.—

35 (1) IN GENERAL.—Not later than January 1, 2017, the Secretary of the Interior, in
36 collaboration with the Secretary of Commerce and the Director of the California
37 Department of Fish and Wildlife, shall begin pilot projects to implement the invasive
38 species control program authorized pursuant to section 103(d)(6)(A)(iv) of Public Law 108–
39 361 (118 Stat. 1690).

40 (2) REQUIREMENTS.—The pilot projects shall—

41 (A) seek to reduce invasive aquatic vegetation, predators, and other competitors

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1 which contribute to the decline of native listed pelagic and anadromous species that
2 occupy the Sacramento and San Joaquin Rivers and their tributaries and the
3 Sacramento-San Joaquin Bay-Delta; and

4 (B) remove, reduce, or control the effects of species, including Asiatic clams,
5 silversides, gobies, Brazilian water weed, largemouth bass, smallmouth bass, striped
6 bass, crappie, bluegill, white and channel catfish, and brown bullheads.

7 (c) Emergency Environmental Reviews.—To expedite the environmentally beneficial
8 programs for the conservation of threatened and endangered species, the Secretaries shall consult
9 with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code
10 of Federal Regulations (or successor regulations), to develop alternative arrangements to comply
11 with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for the programs.

12 SEC. 203. IMPROVED SCIENCE TO BETTER PROTECT 13 THREATENED AND ENDANGERED FISH.

14 (a) Delta Smelt Distribution Study.—

15 (1) IN GENERAL.—Not later than January 1, 2016, contingent on funding, the Secretary of
16 the Interior shall initiate studies, in collaboration with Delta science partners, shall begin to
17 implement a new targeted 3 year sampling and monitoring study specifically designed to
18 understand the location and distribution of Delta smelt throughout their range and to
19 determine potential methods to minimize the effects of Central Valley Project and State
20 Water Project operations on the abundance, distribution, and the types of habitat occupied
21 by Delta smelt during all life stages.

22 (2) CONSULTATION.—In determining the scope of the study authorized under this section,
23 the Secretary is authorized to consult with federal and state water users as well as
24 appropriate non-governmental organizations.

25 (3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to
26 carry out this subsection \$7.5 million for the period of fiscal years 2016 through 2020.

27 SAMPLING. The Delta smelt distribution study shall, at a minimum—

28 (b) Real-time Monitoring.—Contingent on funding, during the period beginning on December
29 1, 2015, and ending March 31, 2016, and during each following December through March period
30 for which this Act is in effect, if suspended sediment loads enter the Delta from the Sacramento
31 River and the suspended sediment loads appear likely to raise turbidity levels in Old River north
32 of the export pumps from values below 12 Nephelometric Turbidity Units (NTUs) to values
33 above 12 NTUs, the Secretary shall—

34 (1) conduct daily monitoring using appropriate survey methods at locations including the
35 vicinity of Station 902 to determine the extent that adult Delta smelt are moving with
36 turbidity toward the export pumps; and

37 (2) use results from the monitoring surveys at locations including the vicinity of Station
38 902 to determine how increased trawling can inform daily real-time Central Valley Project
39 and State Water Project operations to achieve fish protection and water supply
40 benefits minimize salvage while maximizing rates of water export consistent with applicable
41 law (including regulations).

1 SEC. 204. ACTIONS TO BENEFIT REFUGES.

2 (a) In General.—During the period of fiscal years 2015 and 2016 and any following fiscal year
3 in which there is in effect a declaration of drought emergency by the Governor of the State, in
4 addition to funding under section 3407 of the Central Valley Project Improvement Act (Public
5 Law 102–575; 106 Stat. 4726), there is authorized to be appropriated to the Secretary [of the
6 Interior] \$2,000,000 for the acceleration and completion of water infrastructure and conveyance
7 facilities necessary to achieve full water deliveries to Central Valley wildlife refuges and habitat
8 areas pursuant to section 3406(d) of that Act (Public Law 102–575; 106 Stat. 4722).

9 (b) Cost-sharing.—

10 (1) FEDERAL SHARE.—The Federal share of the cost of carrying out an activity described
11 in this section shall be not more than 50 percent.

12 (2) NON-FEDERAL SHARE.—The non-Federal share of the cost of carrying out an activity
13 described in this section—

14 (A) shall be not less than 50 percent; and

15 (B) may be provided in cash or in-kind.

16 TITLE III—PROTECTION OF THIRD-PARTY WATER
17 RIGHTS

18 SEC. 301. OFFSET FOR STATE WATER PROJECT.

19 (a) Implementation Impacts.—The Secretary of the Interior shall confer with the California
20 Department of Fish and Wildlife in connection with the implementation of this Act on potential
21 impacts to any consistency determination for operations of the State Water Project issued
22 pursuant to section 2080.1 of the California Fish and Game Code.

23 (b) Additional Yield.—If, as a result of the application of this Act, the California Department
24 of Fish and Wildlife requires take authorization under section 2081 of the California Fish and
25 Game Code for operation of the State Water Project in a manner that directly or indirectly
26 results in reduced water supply to the State Water Project, as compared with the water supply
27 available under the smelt biological opinion and the salmonid biological opinion, and as a
28 consequence of the Department’s action, Central Valley Project yield is greater than it would
29 have been absent the Department’s actions, then that additional yield shall be made available to
30 the State Water Project for delivery to State Water Project contractors to offset losses resulting
31 from the Department’s action.

32 (c) Notification Related to Environmental Protections.—The Secretary of the Interior or the
33 Secretary of Commerce shall notify the Director of the California Department of Fish and
34 Wildlife regarding any changes in the manner in which the smelt biological opinion or the
35 salmonid biological opinion is implemented and shall confirm that such changes are authorized
36 under the applicable biological opinion.

37 SEC. 302. AREA OF ORIGIN AND WATER RIGHTS
38 PROTECTIONS.

1 (a) In general.—Nothing in this Act—

2 (1A) diminishes, impairs, or otherwise affects in any manner any area of origin,
3 watershed of origin, county of origin, or any other water rights protections, including
4 riparian water rights or rights to water appropriated prior to December 19, 1914,
5 provided under California law; or

6 (2B) limits or otherwise affects the application of section 10505, 10505.5, 11128,
7 11460, 11463, or 12200 through 12220 of the California Water Code or any other
8 provision of California water rights law.

9 (b) Effect of section.—Nothing in this section affects or modifies any obligation of the
10 Secretary of the Interior under section 8 of [the Act of June 17, 1902 (32 Stat. 390, chapter
11 1093)].

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12 ~~(b) Contracts. With respect to individuals and entities with water rights on the Sacramento-
13 River, the mandates of this section may be met, in whole or in part, through a contract with the
14 Secretary [of the Interior] executed pursuant to section 14 of the Act of August 4, 1939 (43
15 U.S.C. 389), that is in conformance with the Sacramento River settlement contracts renewed by
16 the Secretary in 2005. [Client note: Subject to ongoing conversations.]~~

17 SEC. 303. NO REDIRECTED ADVERSE IMPACTS.

18 (a) In General.—The Secretaries shall not take any specific action authorized under this Act
19 that will directly result in the involuntary reduction of water supply to individuals or districts that
20 have in effect contracts for water with the State Water Project or the Central Valley Project, or
21 other water users or purveyors organized under State law that obtain water based on other legal
22 rights, as compared to the water supply that would be provided in the absence of action under
23 this Act.

24 (b) Action on Determination.—

25 (1) IN GENERAL.—If, after exploring all options, 1 of the Secretaries makes a final
26 determination that a proposed action under this Act cannot be undertaken because it would
27 be inconsistent with subsection (a)—

28 (A) the Secretary shall document that determination in writing for that action that
29 includes a statement of the facts relied upon and an explanation of the basis for the
30 decision; and

31 (B) the Secretary shall comply with any other applicable law that requires or
32 authorizes action under the circumstances.

33 (2) SUBSTITUTE ACTIONS.—If the Secretary takes a substitute action as so required or
34 authorized, the substitute action must~~shall~~—

35 (A) be limited to replacement of the specific action identified in paragraph (1);

36 (B) not be subject to the requirements of this Act; and

37 (C) comply with other existing laws (including regulations) as applicable, including
38 the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), including and the
39 ~~[salmonid biological opinion and the smelt biological opinion], and other applicable~~
40 laws (including regulations).

1 SEC. 304. ALLOCATIONS FOR SACRAMENTO VALLEY
2 WATER SERVICE CONTRACTORS.

3 (a) Definition.—In this section, the term “existing Central Valley Project agricultural water
4 service contractor within the Sacramento River Watershed” means any water service contractor
5 within the Shasta, Trinity, or Sacramento River division of the Central Valley Project that has in
6 effect a water service contract on the date of enactment of this Act that provides water for
7 irrigation.

8 (b) Allocations of Water.—

9 (1) DEFINITION OF YEAR TERMS.—In this subsection, the terms “Above Normal”, “Below
10 Normal”, “Dry”, and “Wet”, with respect to a year, have the meanings given those terms in
11 the Sacramento Valley Water Year Type (40–30–30) Index.

12 (2) ALLOCATIONS.—Subject to paragraph (3),~~s and~~ subsection (c), and section 401(1a). the
13 Secretary of the Interior shall make every reasonable effort in the operation of the Central
14 Valley Project, to allocate water provided for irrigation purposes to existing Central Valley
15 Project agricultural water service contractors within the Sacramento River Watershed in
16 compliance with the following:

- 17 (A) Not less than 100 percent of their contract quantities in a “Wet” year.
18 (B) Not less than 100 percent of their contract quantities in an “Above Normal”
19 year.
20 (C) Not less than 100 percent of their contract quantities in a “Below Normal” year
21 that is preceded by an “Above Normal” or a “Wet” year.
22 (D) Not less than 50 percent of their contract quantities in a “Dry” year that is
23 preceded by a “Below Normal”, an “Above Normal”, or a “Wet” year.
24 (E) In all other years not identified in any of subparagraphs (A) through (D), not less
25 than twice the allocation percentage to south-of-Delta Central Valley Project
26 agricultural water service contractors, up to 100 percent; provided, That nothing in this
27 subparagraph shall preclude an allocation to existing Central Valley Project
28 agricultural water service contractors within the Sacramento River Watershed that is
29 greater than twice the allocation percentage to south-of-Delta Central Valley Project
30 agricultural water service contractors.

31 (3) CONDITIONS.—The Secretary’s actions under paragraph (2) shall be subject to—

- 32 (A) the priority of individuals or entities with Sacramento River water rights,
33 including those with Sacramento River settlement contracts, that have priority to the
34 diversion and use of Sacramento River water over water rights held by the United
35 States for operations of the Central Valley Project;
36 (B) the obligation of the United States to make a substitute supply of water available
37 to the San Joaquin River Exchange Contractors; and
38 (C) the obligation of the Secretary of the Interior to make water available to
39 managed wetlands pursuant to section 3406(d) of the Central Valley Project
40 Improvement Act (Public Law 102–575; 106 Stat. 4714).

- 1 (c) Protection of Municipal and Industrial Supplies.—
- 2 (1) EFFECT OF SUBSECTION.—Nothing in subsection (b)—
- 3 (A) modifies any provision of a water service contract that addresses municipal and
4 industrial water shortage policies of the Secretary;
- 5 (B) affects or limits the authority of the Secretary to adopt or modify municipal and
6 industrial water shortage policies; or
- 7 (C) affects or limits the authority of the Secretary to implement municipal and
8 industrial water shortage policies.
- 9 (2) EFFECT ON AMERICAN RIVER DIVISION.—Nothing in subsection (b) or the
10 implementation by the Secretary of subsection (b) shall constrain, govern, or affect, directly
11 or indirectly, the operations of the Central Valley Project's American River division or any
12 deliveries from that division or a unit or facility of that division.
- 13 (d) Allocations to Contractors.—The allocations made pursuant to subsection (b) shall not
14 affect allocations to Central Valley Project municipal and industrial water service contractors by
15 increasing or decreasing allocations to such contractors, compared to allocations such contractors
16 would have received absent subsection (b).
- 17 (e) No Effect on Allocations.—This section shall not—
- 18 (1) affect the allocation of water to Friant division [of the Central Valley Project]
19 contractors; or
- 20 (2) result in the involuntary reduction in contract water allocations to individuals or
21 entities with contracts to receive water from the Friant division.
- 22 (f) Program for Water Rescheduling.—The Secretary shall direct the Commissioner of
23 Reclamation to investigate and, if practicable, develop and implement a program to provide for
24 the opportunity for existing Central Valley Project agricultural water service contractors within
25 the Sacramento River Watershed to reschedule water, provided for under their Central Valley
26 Project contracts, from 1 year to the next, subject to the condition that the program is consistent
27 with existing rescheduling guidelines as utilized by the Bureau of Reclamation for rescheduling
28 water for Central Valley Project water service contractors that are located south of the Delta.

29 TITLE IV—MISCELLANEOUS PROVISIONS

30 SEC. 401. EFFECT ON EXISTING OBLIGATIONS.

- 31 Nothing in this Act—
- 32 (1) authorizes the Secretaries or any other Federal official to take any action or actions
33 that—
- 34 (A) are likely to jeopardize the continued existence of any endangered species or
35 threatened species or result in the destruction or adverse modification of habitat of
36 such a species that is determined by 1 of the Secretaries, after consultation as
37 appropriate with affected States, to be critical; or
- 38 (B) would cause additional adverse effects on listed species beyond those
39 anticipated to occur through implementation of the applicable~~considered under the~~

- 1 smelt biological opinion and salmonid biological opinion;
- 2 (2) preempts or modifies any obligation of the United States under the reclamation laws
- 3 to operate the Central Valley Project in conformance with State law; or
- 4 (3) affects or modifies any obligation under the Central Valley Project Improvement Act
- 5 (Public Law 102–575; 106 Stat. 4706).

6 SEC. 402. LEVEL OF DETAIL REQUIRED FOR ANALYSIS.

7 In articulating the determinations required under this Act, the Secretaries—

- 8 (1) shall fully satisfy the requirements of this Act; but
- 9 (2) shall not be expected to provide a greater level of supporting detail for the analysis
- 10 than feasible to provide within the time frame permitted for timely decisionmaking in
- 11 response to changing conditions in the Delta.

12 SEC. 403. STATUS OF SURFACE STORAGE STUDIES.

13 (a) In General.—Not later than 1 year after the date of enactment of this Act, the Secretary of

14 the Interior shall submit to the Committee on Energy and Natural Resources of the Senate and

15 the Committee on Natural Resources of the House of Representatives a progress report regarding

16 the status of feasibility studies carried out pursuant to clauses (i) and (ii) of section 103(d)(1)(A)

17 of Public Law 108–361 (118 Stat. 1684).

18 (b) Inclusion.—The report under subsection (a) shall include timelines for study completion,

19 draft environmental impact statements, final environmental impact statements, and records of

20 decision.

21 SEC. 404. CORPS OF ENGINEERS DAM WATER 22 CONTROL REVIEW AND REOPERATION.

23 (a) Report.—Not later than 90 days after the date of enactment of this Act, the Secretary of the

24 Army shall submit to the Committees on Appropriations of the Senate and the House of

25 Representatives a report including the following information for any State under a gubernatorial

26 drought declaration during water year 2015:

27 (1) a list of Army Corps projects and non-federal projects operated for flood control in
accordance with rules prescribed by the Secretary of the Army pursuant to the provisions of
Section 7 of the Flood Control Act of 1944 (58 Stat. 890)A list of Corps of Engineers and
other projects (such as projects under section 7 of the Act of December 22, 1944
(commonly known as the “Flood Control Act of 1944”) (58 Stat. 890, chapter 665)) that
have a water control plan.

- 33 (2) The year the original water control manual was approved.
- 34 (3) The year for any subsequent revisions to the water control plan and manual of the
- 35 project.
- 36 (4) A list of projects for which operational deviations for drought contingency have been
- 37 requested, and the status of the request.
- 38 (5) How water conservation and water quality improvements were addressed.

1 (6) A list of projects for which permanent changes to storage allocations have been
2 requested, and the status of the request.

3 (b) Project Identification.—Not later than 60 days after the date of completion of the report
4 under subsection (a), the Secretary of the Army shall identify any projects described in the report
5 that meet the following criteria:

6 (1) The project is located in a State in which a drought emergency has been declared or
7 was in effect during the 1-year period preceding the date of final review by the Secretary.

8 (2) The water control manual and hydrometeorological information establishing the flood
9 control rule curves of the project have not been revised during the 20-year period ending on
10 the date of review by the Secretary.

11 (3) Revision of water operations manuals, including flood control rule curves, based on
12 the use of improved weather forecasting or run-off forecasting methods, new watershed
13 data, or changes to project operations, for the project is likely to enhance the existing
14 authorized project purposes for water supply storage capacity and reliability and flood
15 control operations.

16 (c) Additional Projects Identified.—Not later than 60 days after the date of completion of the
17 report under subsection (a), the Secretary of the Army shall identify any non-Corps of Engineers
18 projects that meet—

19 (1) the criteria in subsection (b); and

20 (2) the following 2 criteria:

21 (A) The owner of the non-federal project has submitted to the Secretary of the Army
22 a formal request to review or revise the operations manual or flood control rule curves
23 to accommodate new watershed data or projected project modifications or operational
24 changes.

25 (B) The modifications or operational changes proposed by the owner of the non-
26 federal project are likely to enhance water supply benefits and flood control operations.

27 (d) Pilot Projects.—

28 (1) IN GENERAL.—Not later than 1 year after the date of identification of the projects
29 under subsections (b) and (c), if any, the Secretary of the Army shall carry out not more
30 than 5 pilot projects, including at least two non-federal projects as defined in subsection
31 (a)(1), if any are identified in subsections (b) and (c), to implement revisions of water
32 operations manuals, including flood control rule curves, based on the best available science,
33 which may include forecast-informed operations, new watershed data, and, if applicable,
34 spillway improvements, to implement forecast-based reservoir operations.

35 (2) CONSULTATION.—In implementing the pilot projects pursuant to this subsection, the
36 Secretary of the Army shall consult with all affected interests, including non-Federal
37 entities responsible for operations and maintenance costs of a Corps of Engineers facility,
38 affected water rights holders, individuals and entities with storage entitlements, and local
39 agencies with flood control responsibilities downstream of a Corps of Engineers facility.

40 (e) Coordination With Non-Federal Project SponsorsEntities.—If a project identified under
41 subsection (b) or (c) is a non Federal project, the Secretary of the Army, prior to carrying out an

1
2 (1) a non-Federal project, the Secretary of the Army, prior to carrying out an activity
3 under this section, shall consult with the non-Federal project owner and enter into a
4 cooperative agreement, memorandum of understanding or other agreement with the non-
5 federal project owner. —consult with, as applicable

6 (2) owned and operated by the Army Corps, the Secretary, prior to carrying out an
7 activity under this section, shall consult with the non-federal project sponsors, defined as
8 those entities that currently manage (in whole or in part) an Army Corps of Engineers dam
9 or reservoir, or are responsible for operations and maintenance costs, including, a municipal
10 water district, irrigation district, joint powers authority or other local-government entity, and
11 enter into a cooperative agreement, memorandum of understanding or other agreement with
12 the non-federal project sponsor.

13 (A) the non-Federal project sponsor (including any entity that manages (in whole or
14 in part) a Corps of Engineers dam or reservoir); or

15 (f) Consideration.—In designing and implementing a forecast-based informed reservoir
16 operations plan, the Secretary of the Army shall may consider—

17 (1) the relationship between ocean and atmospheric conditions, including the El Nino and
18 La Nina cycles, and the potential for above-normal, normal, and below-normal rainfall for
19 the coming water year, and may include consideration of atmospheric river forecasts;

20 (2) the precipitation and runoff index specific to the basin and watershed of the relevant
21 dam or reservoir, including incorporating knowledge of hydrological and meteorological
22 conditions that influence the timing and quantity of runoff;

23 (3) improved hydrologic forecasting for precipitation, snowpack, and soil moisture
24 conditions;

25 (4) an adjustment of operational flood control rule curves to optimize water supply
26 storage and reliability, hydropower production, environmental benefits for flows and
27 temperature, and other authorized project benefits, without a reduction in flood safety; and

28 (5) proactive management in response to changes in forecasts.

29 (g) Funding.—On finalizing an agreement with a non-Federal project sponsor or non-Federal
30 project owner pursuant to subsection (e), the Secretary of the Army may accept non-Federal
31 funds for all or a portion of the cost of carrying out a review or revision of water control manuals
32 and flood control rule curves.

33 (h) Effect.—

34 (1) MANUAL REVISIONS.—A revision of a manual shall not interfere with the authorized
35 purposes of the projectpurposes of this section.

36 (2) EFFECT OF ACT.—Nothing in this Act authorizes the Secretary of the Army to carry
37 out, at a Corps of Engineers or non-Federal dam or reservoir, any project or activity for a
38 purpose not otherwise authorized as of the date of enactment of this Act.

39 (3) BUREAU OF RECLAMATION PROJECTS EXCLUDED – This section shall not apply to
40 dams and reservoirs owned by the Bureau of Reclamation.

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1 (i) Modifications to Manuals and Curves.—Not later than 180 days after the date of
2 completion of a modification to an operations manual or flood control rule curve, the Secretary
3 of the Army shall submit to Congress a report regarding the components of the forecast-based
4 reservoir operations plan incorporated into the change.

5 **SEC. 405. TERMINATION.**

6 This Act shall expire on the later of—

- 7 (1) the date on which the Governor of the State declares an end to the State drought
8 emergency; and
9 (2) September 30, 2017.

From: Karen, Catherine
Sent: Monday, May 18, 2015 5:34 AM
To: Bernhardt, David L.; Johnny Amaral
CC: Dennis Cardoza; Denny Rehberg; Joe Findaro
Subject: RE: Weekly call

Hi,
So are we set for a 1 pm today? I have a 1:30 and someone else asking about a 1 pm slot, hence why I am checking. And if so, what is the call in?
Thx

From: Bernhardt, David L.
Sent: Friday, May 15, 2015 11:33:15 AM
To: Johnny Amaral
Cc: Karen, Catherine; Dennis Cardoza; Denny Rehberg; Joe Findaro
Subject: Re: Weekly call

I can be available at 1 pm eastern.

David Bernhardt

On May 15, 2015, at 12:29 PM, Johnny Amaral <jamaral@westlandswater.org> wrote:

Team,

I know I have mentioned this to some of you in the past, and at the risk of being a pain in the butt, I think we need to carve out about 15-20 minutes every Monday to go over the week ahead and to discuss "weekly opportunities". It seems like we're missing a chance to put all of our brilliant minds together (mine excluded) if we're only talking Friday mornings to discuss what has already happened.

I'm doing the same thing with the team in Sacramento, with the same intention in mind.

I usually get to the office on Monday mornings at 8:30 am PST. I can be available at any time to accommodate your schedules. 10 am CA time is right after lunch time in DC. So you can all be liquored up after lunch to ease the pain. Good?

Johnny

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immediately.

From: Johnny Amaral
Sent: Monday, May 18, 2015 6:21 AM
To: Karen, Catherine
CC: Bernhardt, David L.; Dennis Cardoza; Denny Rehberg; Joe Findaro
Subject: Re: Weekly call

If like to still do the call today. I havent recieved confirmation from Karen about the conf call number but I'm almost certain is the usual call in number. The one we use for Friday calls.

Best,

Johnny Amaral

On May 18, 2015, at 5:33 AM, "Karen, Catherine" <ckaren@sidley.com> wrote:

Hi,

So are we set for a 1 pm today? I have a 1:30 and someone else asking about a 1 pm slot, hence why I am checking. And if so, what is the call in?

Thx

From: Bernhardt, David L.
Sent: Friday, May 15, 2015 11:33:15 AM
To: Johnny Amaral
Cc: Karen, Catherine; Dennis Cardoza; Denny Rehberg; Joe Findaro
Subject: Re: Weekly call

I can be available at 1 pm eastern.

David Bernhardt

On May 15, 2015, at 12:29 PM, Johnny Amaral <jamaral@westlandswater.org> wrote:

Team,

I know I have mentioned this to some of you in the past, and at the risk of being a pain in the butt, I think we need to carve out about 15-20 minutes every Monday to go over the week ahead and to discuss "weekly opportunities". It seems like were missing a chance to put all of our brilliant minds together (mine excluded) if we're only talking Friday mornings to discuss what has already happened.

I'm doing the same thing with the team in Sacramento, with the same intention in mind.

I usually get to the office on Monday mornings at 8:30 am PST. I can be available at any time to accommodate your schedules. 10 am CA time is right after lunch time in DC. So you can all be liquored up after lunch to ease the pain. Good?

Johnny

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From: Johnny Amaral
Sent: Monday, May 18, 2015 6:40 AM
To: Denny Rehberg
CC: Karen, Catherine; DCardoza@foley.com; David Bernhardt; Joe Findaro; Daley, Jane
Subject: Re: Weekly call

1pm est

Call in. [866.246.9512](tel:866.246.9512)
Pass code [243586742](#)

Best,

Johnny Amaral

On May 18, 2015, at 6:22 AM, "Denny Rehberg" <DRehberg@mercuryllc.com> wrote:

I have some flexibility in my flight schedule. Will be joining today.

On May 15, 2015, at 6:03 PM, Johnny Amaral <jamaral@westlandswater.org> wrote:

Looks like 1pm EST works for almost everyone. Denny, will there be any Mondays when 1pm WILL work for you?

.....
Mercury.
Denny Rehberg
[REDACTED]

-----Original Message-----

From: Karen, Catherine [<mailto:ckaren@sidley.com>]
Sent: Friday, May 15, 2015 10:41 AM
To: DCardoza@foley.com; Johnny Amaral
Cc: David Bernhardt; Denny Rehberg; Joe Findaro; Daley, Jane
Subject: RE: Weekly call

I can do 1 pm. Thank you
Catherin

CATHERINE KAREN

Counsel

Sidley Austin LLP

+1.202.736.8368

ckaren@sidley.com

-----Original Message-----

From: DCardoza@foley.com [mailto:DCardoza@foley.com]

Sent: Friday, May 15, 2015 1:04 PM

To: Johnny Amaral

Cc: Karen, Catherine; David Bernhardt; Denny Rehberg; Joe Findaro

Subject: Re: Weekly call

1pm Monday's works for me. Dennis

Congressman Dennis A. Cardoza

Foley & Lardner LLP

Suite 600

3000 K Street, NW<x-apple-data-detectors://0/0> Washington, DC 20007-
5109<x-apple-data-detectors://0/0>

Phone: 202.295-4015

Fax: 202.672.5399<tel:202.672.5399>

Email: [<mailto:dcardoza@foley.com>](mailto:dcardoza@foley.com)

Sent from my iPhone

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by the recipient or any other taxpayer, for the purpose of avoiding federal tax penalties, and was not written to support the promotion or marketing of any transaction or matter discussed herein.

On May 15, 2015, at 12:29 PM, Johnny Amaral
jamaral@westlandswater.org<<mailto:jamaral@westlandswater.org>>> wrote:

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From: Johnny Amaral
Sent: Monday, May 18, 2015 10:27 AM
To: 'Denny Rehberg'
CC: 'Karen, Catherine'; DCardoza@foley.com; 'David Bernhardt'; 'Joe Findaro'; 'Daley, Jane'
Subject: RE: Weekly call

My non westlands email address is

johnnyamaral4@gmail.com

-----Original Message-----

From: Denny Rehberg [<mailto:DRehberg@mercuryllc.com>]
Sent: Monday, May 18, 2015 6:17 AM
To: Johnny Amaral
Cc: Karen, Catherine; DCardoza@foley.com; David Bernhardt; Joe Findaro; Daley, Jane
Subject: Re: Weekly call

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Denny Rehberg
[REDACTED]

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> Sent: Friday, May 15, 2015 10:41 AM
> To: DCardoza@foley.com; Johnny Amaral
> Cc: David Bernhardt; Denny Rehberg; Joe Findaro; Daley, Jane
> Subject: RE: Weekly call

>
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> Catherin

>

> CATHERINE KAREN

> Counsel

>

> Sidley Austin LLP

> +1.202.736.8368

> ckaren@sidley.com

> -----Original Message-----

> From: DCardoza@foley.com [<mailto:DCardoza@foley.com>]
> Sent: Friday, May 15, 2015 1:04 PM
> To: Johnny Amaral
> Cc: Karen, Catherine; David Bernhardt; Denny Rehberg; Joe Findaro
> Subject: Re: Weekly call
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>

>
>
> Congressman Dennis A. Cardoza
> Foley & Lardner LLP
> Suite 600
> 3000 K Street, NW<x-apple-data-detectors://0/0> Washington, DC
> 20007-5109<x-apple-data-detectors://0/0>
> Phone: 202.295-4015
> Fax: 202.672.5399<tel:202.672.5399>
> Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>>
>
>
> Sent from my iPhone
>
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>
> *****
> ***** This e-mail is sent by a law firm and
> may contain information that is privileged or confidential.
> If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.
>
> *****
> *****

From: MacMillan, Anne

Sent: Thursday, May 21, 2015 10:50 AM

To: dcardoza@foley.com; dnuxoll@wga.com; Joe Raeder; joe.findaro@akerman.com; jamaral@westlandswater.org; Nancy Williams (nwilliams@swaconsult.com); 'Bernhardt, David L.' (DBernhardt@BHFS.com)

Subject: E&E Article and draft text leak

Nuxoll flagged this for me this am, so I wanted to make sure we all had it before our 3pm call. ☺

Calif. House bill in works could portend wider Western drought legislation

Nick Juliano and Annie Snider, E&E reporters

Published: Thursday, May 21, 2015

House Republicans from California are readying legislation to address their home state's ongoing drought by focusing on water transfers and storage while attempting to avoid the most controversial proposals to roll back environmental regulations that sank earlier legislative efforts.

A bill is expected to be introduced as soon as next month, after lawmakers return from their upcoming weeklong Memorial Day recess. Details are being closely guarded, but sources familiar with the effort say the California-specific legislation would likely become part of a broader bill addressing drought conditions across the West.

A **draft bill** circulating among stakeholders would tweak Endangered Species Act protections for fish that inhabit the state's main water delivery system in order to send more water south, similar to bills that passed the House last year. But a GOP aide said the proposal was not a reflection of the "current state of play" on a California water bill, which would focus primarily on delivering water south and increasing storage capacity.

Rep. Jim Costa, a moderate Democrat who represents parts of California's agriculture-heavy Central Valley, said he has offered Republicans some suggestions for their bill but that the authors have been "understandably" tight-lipped about its contents. He said he expects a bill to be introduced the week of June 1, following the congressional recess, and added that action is even more necessary this year as conditions continue to deteriorate because of the drought.

"Just as last year we were attempting to deal with both short-term and long-term solutions, we were not successful, and things have not gotten any better," Costa said.

The goal of the California Republicans writing the bill is to arrive at a proposal that could win support from at least six Senate Democrats whose votes would be needed to avoid a filibuster in that chamber and to win President Obama's signature, these sources say. But it remains to be seen whether such consensus would be possible.

Key targets include Democratic Sens. Dianne Feinstein of California, Michael Bennet of Colorado and Tom Udall of New Mexico, an aide involved in the process said. But House Republicans are largely writing off the chance of securing support from more liberal Westerners such as Senate Minority Leader Harry Reid of Nevada or California Sen. Barbara Boxer, who objected to earlier drought bills over proposed changes to environmental laws such as the Endangered Species Act.

Costa reiterated the advice he said he gave Boxer last year -- "at some point, she's got to decide whether she wants to try to help solve some of these problems or whether she's satisfied with the status quo" -- but said he did not know whether she is involved in negotiations.

"There may be engagement," he said. "But I'm not aware of it."

Regarding concerns over the effects of drought relief on wildlife, Costa recalled studies he read arguing that the effects of climate change may drive some species extinct regardless of what is done in response to the drought and suggested that lawmakers needed to narrow their focus.

"A lot of species we're attempting to save may become extinct anyway," Costa told reporters yesterday. "And so we're not having the conversation -- if, in fact, biologists believe that to be the case in the next 40 to 60 years -- where do we best use our resources to manage those species that we can maintain?"

Costa said he spoke with Senate Energy and Natural Resources Chairwoman Lisa Murkowski earlier this week about a Western drought bill the Alaska Republican is working on. And he plans to meet today with California Secretary for Natural Resources John Laird, who is on Capitol Hill this week meeting with various lawmakers about the drought.

Costa also praised the Obama administration, particularly Deputy Interior Secretary Mike Connor, who has been spearheading the drought response. But the federal government's overall approach has been focused mostly on supporting the California state government and waiting for consensus to emerge among the state's congressional delegation, "which has been an elusive goal," he noted.

"In terms of taking any big action, I think, on an issue that has been as contentious as water has been in California for decades, they're not going to take the leadership role, is my point," Costa said of the administration. "But have they been involved? Yes."

Murkowski is also following the negotiations with an eye toward West-wide collaboration.

"Senator Murkowski recognizes the seriousness of the drought conditions in California and throughout the West and stands ready to help her colleagues in the Senate and the House find a solution that addresses these serious concerns," spokesman Mike Tadeo said.

In a separate interview with *E&E Daily* yesterday, Connor said his department is in close contact with lawmakers as they work on legislation.

"We've been providing a lot of technical support to particularly Senator Feinstein and her staff as they've gone through various machinations of potential drought legislation," he said. "We haven't taken a position on any legislation at this point in time."

Connor, who served as commissioner of the Bureau of Reclamation before moving up to the Interior Department's No. 2 spot last year, said that the administration has been focused on finding room for additional flexibility and boosting water deliveries while still working within the Endangered Species Act. To that end, the extra funding appropriators have sent their way has been key, he said. Yesterday, Interior Secretary Sally Jewell announced \$50 million in grants from the Reclamation Wastewater and Groundwater Study and Facilities Act to improve water efficiency and conservation in California and 11 other Western states.

"The resources that we've been provided through the appropriations process I think have been well invested," Connor said. "I think the monitoring, the science, the data gathering activities have helped us be more flexible in our operations, so we could certainly do more of that."

The Senate Appropriations Committee is slated to mark up its energy and water development funding bill, which includes the Bureau of Reclamation, later this morning. The bill passed out of subcommittee includes \$50 million in emergency drought relief funds, and Feinstein has signaled she may push to increase that amount.

Connor said he would welcome a broader conversation in Congress about drought across the West, where the current parched conditions are exacerbating a growing gap between supply and demand in many booming regions.

He noted that in the West, where communities' water supplies can come from far-flung sources, impacts in one area can have knock-on effects in others. For instance, he pointed out that Southern California gets water both from the Sacramento-San Joaquin River Delta, known as the Bay Delta, and from the Colorado River.

"There's a nexus there, and when we lose flexibility in both systems like we're having now with the drought in both areas, it certainly increases the challenges that we all have," he said. "We're working with a lot of state and local entities on ways to create resilience long-term, given the fact that projections are for us to continue to experience challenges, and there may be some legislation that's needed out of that, or there may be just some actions that we can take through negotiated agreements that help us get more flexibility into the systems."

Agricultural producers in the San Joaquin Valley who backed last year's attempts by the House are getting impatient.

"We're not holding our breath for a drought bill out of Congress," said John Broeske, executive director of the group Families Protecting the Valley. "For anything meaningful like a redo of the [San Joaquin] River restoration or a modification of the ESA, even with a Republican House and Senate, there is still the Obama veto to overcome."

Reporter Debra Kahn contributed.

Anne MacMillan | Director of Government Affairs

ROLL GLOBAL LLC | www.roll.com

1901 Pennsylvania Ave, NW Suite 1100, Washington, DC 20006

cell: 202 [REDACTED] | office: 202 [REDACTED] | email: amacmillan@roll.com



From: Tom Birmingham
Sent: Thursday, May 21, 2015 5:13 PM
To: 'Nelson, Damon'
CC: 'Bernhardt, David L.'
Subject: Draft
Attachments: CA Water Draft.doc

Damon,
Attached is a draft. Please call me in the morning to discuss the proposed amendments.
Tom

Title: To provide drought relief in the State of California, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

- (a) Short Title.—This Act may be cited as the “California Drought Relief Act of 201~~54~~”.
- (b) Table of Contents.—The table of contents of this Act is as follows:

Sec.1.Short title; table of contents.

Sec.2.Findings.

Sec.3.Definitions.

TITLE I—ADJUSTING DELTA SMELT MANAGEMENT BASED ON INCREASED REAL-TIME MONITORING AND UPDATED SCIENCE

Sec.101.Definitions.

Sec.102.Revise incidental take level calculation to reflect new science.

Sec.103.Factoring increased real-time monitoring and updated science into Delta smelt management.

TITLE II—ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE

Sec.201.Definitions.

Sec.202.Required scientific studies.

Sec.203.Process for ensuring salmonid management is responsive to new science.

Sec.204.Pilot program to protect native anadromous fish in the Stanislaus River.

Sec.205.CALFED invasive species pilot projects in the Sacramento-San Joaquin Bay Delta and its tributaries.

TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT RELIEF

Sec.301.Findings.

Sec.302.Definitions.

Sec.303.Operational flexibility in times of drought.

Sec.304.Operation of cross-channel gates.

Sec.305.Flexibility for export/inflow ratio.

Sec.306.Emergency environmental reviews.

Sec.307.Increased flexibility for regular project operations.

Sec.308.Temporary operational flexibility for first few storms of the water year.

Sec.309.Expediting water transfers.

Sec. 310. Additional Emergency Consultation

Sec. 311. New Melones Transfer

Sec. 312. ESA Applicants

TITLE IV—INCREASING WATER STORAGE

Sec.401. CALFED STORAGE FEASIBILITY STUDIES

Sec.402. Temperance Flat

Sec. 403. Calfed Storage Accountability

Sec.404. Water storage project construction

Sec.405. Dam safety projects with increased storage component.

TITLE V—WATER RIGHTS PROTECTIONS

Sec.501. Protections for State water project contractors.

Sec.502. Area of origin protections.

Sec.503. No redirected adverse impacts.

Sec.504. ALLOCATIONS FOR SACRAMENTO VALLEY CONTRACTORS

Sec. 505. Effect on Existing Obligations

TITLE VI—MISCELLANEOUS

Sec.601. Authorized service area.

Sec.602. Oversight board for Restoration Fund.

Sec.603.I. Water Supply Accounting

Sec. 604. Implementation of Water Replacement Plan

Sec. 605. Natural and Artificially Spawning Species

Sec. 606. Amendment to Purposes

Sec. 607. Amendment to Definitions

Title VII. REGULATORY STREAMLINING AND WATER RIGHTS.

Sec. 701. Permitting Efficiencies

Sec. 702. Payment of Certain Repayment Contracts

Sec. 703. Bureau of Reclamation Surface Water Storage Streamlining

Sec. 704. Environmental Procedures Streamlining

Sec. 705. Water Rights Protections

Section 2. Findings

Congress finds that—

(1) Data on the difference between water demand and reliable water supplies for various regions of California that are south of the Delta, including the San Joaquin Valley, indicate there is a significant annual gap between reliable water supplies to meet agricultural, municipal and industrial, groundwater, and refuges water needs within the South-of-Delta Division, the San Luis Unit, and the Friant Division of the Central Valley Project and the State Water Project service area south of the Sacramento-San Joaquin River Delta ~~and north of the Tehachapi mountain range~~ and the demands of those areas. This gap varies depending on the methodology of the analysis performed, but can be represented in the following ways:

(A) For Central Valley Project South-of-Delta water service contractors, if it is assumed that a water supply deficit is the difference in the amount of water available for allocation versus the maximum contract quantity, then the water supply deficits that have developed from 1992 to 2014 as a result of legislative and regulatory changes besides natural variations in hydrology during this timeframe range between 720,000 and 1,100,000 acre-feet.

(B) For Central Valley Project and State Water Project water service contractors south of the Delta and north of the Tehachapi mountain range, if it is assumed that a water supply deficit is the difference between reliable water supplies, including maximum water contract deliveries, safe yield of groundwater, safe yield of local and surface supplies and long-term contracted water transfers, and water demands, including water demands from agriculture, municipal and industrial and refuge contractors, then the water supply deficit ranges between approximately 2,500,000 to 2,700,000 acre-feet.

(B)

(2) Data of pumping activities at the Central Valley Project and State Water Project delta pumps identifies that, on average from Water Year 2009 to Water Year 2014, take of Delta smelt is 80 percent less than allowable take levels under the biological opinion issued December 15, 2008.

(3) Data of field sampling activities of the Interagency Ecological Program located in the Sacramento-San Joaquin Estuary identifies that, on average from 2005 to 2013, the program “takes” 3,500 delta smelt during annual surveys with an authorized “take” level of 33,480 delta smelt annually – according to the biological opinion issued December 9, 1997.

(4) It is worth exploring whether there is a way to implement the biological opinions that would preserve the protections afforded listed fish and simultaneously increase water deliveries to the Central Valley Project and State Water Project without weakening environmental laws or protections.

(5) In 2014, better information exists than was known in 2008 concerning conditions and operations that may or may not lead to high salvage events that jeopardize the fish populations, and what alternative management actions can be taken to avoid jeopardy.

(6) Alternative management strategies, such as trapping and barging juvenile salmon through the Delta, removing non-native species, enhancing habitat, monitoring fish movement and location in real-time, and improving water quality in the Delta can contribute significantly to protecting and recovering these endangered fish species, and at potentially lower costs to water supplies.

(7) Resolution of fundamental policy questions concerning the extent to which application of the Endangered Species Act affects the operation of the Central Valley Project and State Water Project is the

responsibility of Congress.

SEC. 3. DEFINITIONS.

In this Act:

- (1) DELTA.—The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.
- (2) Export Pumping Rates.—The term “export pumping rates” means the rates of pumping at the C.W. “Bill” Jones Pumping Plant and the Harvey O. Banks Pumping Plant, in the southern Delta.
- (3) LISTED FISH SPECIES.—The term “listed fish species” means listed salmonid species and the Delta smelt.
- (4) LISTED SALMONID SPECIES.—The term “listed salmonid species” means natural origin steelhead, natural origin genetic spring run Chinook, and genetic winter run Chinook salmon including hatchery steelhead or salmon populations within the evolutionary significant unit (ESU) or distinct population segment (DPS).
- (5) NEGATIVE IMPACT ON THE LONG-TERM SURVIVAL.—The term “negative impact on the long-term survival” means to reduce appreciably the likelihood of the survival of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.
- (6) OMR.—The term “OMR” means the Old and Middle River in the Delta.
- (7) OMR FLOW OF -5000 CFS.—The term “OMR flow of -5000 cfs” means Old and Middle River flow of negative 5,000 cubic feet per second as described in—
 - (A) the smelt biological opinion; and
 - (B) the salmonid biological opinion.
- (8) SALMONID BIOLOGICAL OPINION.—The term “salmonid biological opinion” means the biological opinion issued by the National Marine Fisheries Service on June 4, 2009.
- (9) SMELT BIOLOGICAL OPINION.—The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008.
- (10) STATE.—The term “State” means the State of California.

TITLE I—ADJUSTING DELTA SMELT MANAGEMENT BASED ON INCREASED REAL-TIME MONITORING AND UPDATED SCIENCE

SEC. 101. DEFINITIONS.

In this title:

- (1) DIRECTOR.—The term “Director” means the Director of the United States Fish and Wildlife Service.
- (2) DELTA SMELT.—The term “Delta smelt” means the fish species with the scientific name *Hypomesus transpacificus*.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

SEC. 102. REVISE INCIDENTAL TAKE LEVEL CALCULATION FOR DELTA SMELT TO REFLECT NEW SCIENCE.

(a) No later than October 1, 2016, and at least every five years thereafter, the Director of Fish and Wildlife Service, in cooperation with other federal, state, and local agencies, shall use the best scientific and commercial data available to complete a review and, modify the method used to calculate the incidental take levels for adult and larval/juvenile Delta smelt in the smelt biological opinion that takes into account all life stages, among other considerations,—

- (1) salvage information collected since at least 1993;
- (2) updated or more recently developed statistical models;
- (3) updated scientific and commercial data; and
- (4) the most recent information regarding the environmental factors affecting driving Delta smelt salvage.

(b) Modified Incidental Take Level.—Unless the Director determines in writing that one or more of the requirements described in paragraphs (1) through (4) below are not appropriate, the modified incidental take level described in subsection (a) shall—

- (1) Be normalized for the abundance of prespawning adult Delta smelt using the Fall Midwater Trawl Index or other index;
- (2) Be based on a simulation of the salvage that would have occurred from 1993 through 2012 if OMR flow has been consistent with the smelt biological opinions;
- (3) Base the simulation on a correlation between annual salvage rates and historic water clarity and OMR flow during the adult salvage period; and
- (4) Set the incidental take level as the 80 percent upper prediction interval derived from simulated salvage rates since at least 1993;

SEC. 103. FACTORING INCREASED REAL-TIME MONITORING AND UPDATED SCIENCE INTO DELTA SMELT MANAGEMENT.

(a) In General.—The Director shall use the best scientific and commercial data available to implement, continuously evaluate, and refine or amend, as appropriate, the reasonable and prudent alternative described in the smelt biological opinion, and any successor opinions or court order. The Secretary shall make all significant decisions that implement under the smelt biological opinion, or any successor opinions, that affect Central Valley Project and State Water Project operations in writing, and shall document the significant facts upon which such decisions are made, consistent with Section 706 of Title 5 of the United States Code.

(b) Increased Monitoring to Inform Real-time Operations— The Secretary shall conduct additional surveys, on an annual basis at the appropriate time of the year based on environmental conditions, in collaboration with other Delta science interests.

- (1) In implementing this section, the Secretary shall —

(A) use the most accurate survey methods available for the detection of Delta smelt to determine the extent that adult Delta smelt are distributed in relation to certain levels of turbidity, or other environmental factors that may influence salvage rate; and

(B) use results from appropriate survey methods for the detection of Delta smelt to determine how the Central Valley Project and State Water Project may be operated more efficiently to minimize salvage while maximizing export pumping rates without causing a significant negative impact on the long term survival of the Delta smelt.

(2) During the period beginning on December 1, 2015 and ending March 31, 2016, and in each successive December through March period, if suspended sediment loads enter the Delta from the Sacramento River and the suspended sediment loads appear likely to raise turbidity levels in Old River north of the export pumps from values below 12 Nephelometric Turbidity Units (NTU) to values above 12 NTU, the Secretary shall—

(A) conduct daily monitoring using appropriate survey methods at locations including, but not limited to, the vicinity of Station 902 to determine the extent that adult Delta smelt are moving with turbidity toward the export pumps; and

(B) use results from the monitoring surveys referenced in paragraph (A) to determine how increased trawling can inform daily real-time Central Valley Project and State Water Project operations to minimize salvage while maximizing export pumping rates without causing a significant negative impact on the long-term survival of the Delta smelt.

(c) Periodic Review of Monitoring.—Within twelve months of the date of enactment of this title, and at least once every 5 years thereafter, the Secretary shall—

(1) evaluate whether the monitoring program under subsection (b), combined with other monitoring programs for the Delta, is providing sufficient data to inform Central Valley Project and State Water Project operations to minimize salvage while maximizing export pumping rates without causing a significant negative impact on the long-term survival of the Delta smelt; and

(2) determine whether the monitoring efforts should be changed in the short- or long-term to provide more useful data.

(d) Delta Smelt Distribution Study.—

(1) IN GENERAL.— No later than January 1, 2016, and at least every five years thereafter, the Secretary, in collaboration with the California Department of Fish and Wildlife, the California Department of Water Resources, public water agencies, and other interested entities, shall implement new targeted sampling and monitoring specifically designed to understand Delta smelt abundance, distribution, and the types of habitat occupied by Delta smelt during all life stages.

(2) SAMPLING.—The Delta smelt distribution study shall, at a minimum—

(A) include recording water quality and tidal data;

(B) be designed to understand Delta smelt abundance, distribution, habitat use, and movement throughout the Delta, Suisun Marsh, and other areas occupied by the Delta smelt during all seasons;

(C) consider areas not routinely sampled by existing monitoring programs, including wetland channels, near-shore water, depths below 35 feet, and shallow-water; and

(D) use survey methods, including sampling gear, best suited to collect the most accurate data for the type of sampling or monitoring.

(e) Scientifically supported implementation of Old and Middle River flow requirements.—In implementing the provisions of the smelt biological opinion, or any successor biological opinion or court order, pertaining to management of reverse flow in the Old and Middle Rivers, the Secretary shall—

(1) consider the relevant provisions of the biological opinion or any successor biological opinion;

(2) ~~manage reverse flow in Old and Middle Rivers as prescribed by the smelt biological opinion, or any successor biological opinion or court order, to maximize water supply for the Central Valley Project and the State Water Project water supplies. manage export pumping rates to achieve a reverse flow rate in Old and Middle Rivers of by establishing OMR flow at -5,000 cubic feet per second~~ unless information developed by the Secretary under paragraphs (3) and (4) leads the Secretary to reasonably conclude that ~~a~~ less negative OMR flow ~~rates are~~ is necessary to avoid a significant negative impact on the long-term survival of the Delta smelt. ~~Water supplies for the Central Valley Project and the State Water Project may be increased if information available to the Secretary indicates that a pumping levels reverse flow rate in Old and Middle Rivers more negative than -5,000 cubic feet per second can be established without an imminent and significant negative impact on the long-term survival of the Delta smelt. the Secretary shall manage export pumping rates to achieve that more negative OMR flow rate:~~

(3) document in writing any significant facts about real-time conditions relevant to the determinations of reverse OMR flow rates, including—

(A) whether targeted real-time fish monitoring in Old River pursuant to this section, including monitoring in the vicinity of Station 902, indicates that a ~~significant~~ negative impact on the long-term survival of the Delta smelt is imminent; and

(B) whether near-term forecasts with available salvage models show under prevailing conditions that OMR flow of -5000 cubic feet per second or higher will cause a ~~significant~~ negative impact on the long-term survival of the Delta smelt; and

(4) show in writing that any determination to manage OMR reverse flow at rates less negative than -5000 cubic feet per second is necessary to avoid a ~~significant~~ negative impact on the long-term survival of the Delta smelt, including an explanation of the data examined and the connection between those data and the choice made, after considering:

(A) ~~the distribution of Delta smelt throughout the Delta; whether continued project operations over the remainder of the water year would exceed the incidental take level;~~

(B) ~~the potential effects of documented, quantified entrainment on subsequent Delta smelt abundance; including consideration of the distribution of the population throughout the Delta,~~

(C) the water temperature;²⁵

(D) other significant factors relevant to the determination; and

(E) whether any alternative measures could have a substantially lesser water supply impact.

(45) for any subsequent biological opinion, make the showing required in paragraph (45) for any determination to manage OMR reverse flow in Old and Middle Rivers at rates less negative than the most negative upper limit in the biological opinion if the most negative upper limit in the biological opinion is more negative than -5,000 cubic feet per second.

(f) Memorandum of Understanding. No later than December 1, 201~~65~~, the Commissioner and the Director will execute a Memorandum of Understanding (MOU) to ensure that the smelt biological opinion is implemented in a manner that maximizes water supply while complying with applicable laws and regulations. If that MOU alters any procedures set out in the biological opinion, there will be no need to reinitiate consultation if those changes will do not have a significant negative impact on the long-term survival of listed species and the implementation of the MOU would not be a major change to implementation of the biological opinion. Any change to procedures that does not create a significant negative impact on the long-term survival of listed species will not alter application of the take permitted by the incidental take statement in the biological opinion under the Endangered Species Act, section 7(o)(2).

(g) Calculation of Reverse Flow in OMR.-Within 90 days of the enactment of this title, the Secretary is directed, in consultation with the California Department of Water Resources, to revise the method used to calculate reverse flow in Old and Middle Rivers for implementation of the reasonable and prudent alternatives in the smelt biological opinion and the salmonid biological opinion, and any succeeding biological opinions, for the purpose of increasing Central Valley Project and State Water Project water supplies. The method of calculating reverse flow in Old and Middle Rivers shall be reevaluated not less than every five years thereafter to achieve maximum export pumping rates within limits established by the smelt biological opinion, the salmonid biological opinion, and any succeeding biological opinions.

TITLE II—ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE

SEC. 201. DEFINITIONS.

In this title:

- (1) ASSISTANT ADMINISTRATOR.—The term “Assistant Administrator” means the Assistant Administrator of NOAA Fisheries.
- (2) SECRETARY.—The term “Secretary” means the Secretary of Commerce.
- (3) Other Affected Interests. — The term “other affected interests” means the State of California, subdivisions of the State of California, Indian tribes, public water agencies and those who benefit directly and indirectly from the operations of the Central Valley Project and the State Water Project.
- (4) Commissioner.—The term “Commissioner” means the Commissioner of the Bureau of Reclamation.
- (5) DIRECTOR.—The term “Director” means the Director of the United States Fish and Wildlife Service.

SEC. 202. REQUIRED SCIENTIFIC STUDIES.

(a) Trap and Barge Pilot Project to Increase Survivals Through the Delta.—The Assistant Administrator and the Commissioner shall, in collaboration with the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife, ~~public water agencies~~, and other affected interests, interested parties, design, permit, implement and evaluate a pilot program to test the efficacy of an experimental trap and barge program to improve survival of juvenile salmonids emigrating from the San Joaquin watershed through the Delta, as further described below.

(1) Within 30 days of enactment, the Assistant Administrator shall convene a working group of the relevant agencies and other affected interests interested parties through which to develop and execute a plan for the design, budgeting, implementation and evaluation of such a pilot program, utilizing existing expertise on such trap and barge programs as may be available. Such plan shall detail a schedule and budget for the program, and identify the responsible parties for each element of the program.

(2) The Assistant Administrator shall provide an opportunity for 30 days of public review and comment on the pilot program and also simultaneously seek an expeditious independent peer review of the program to improve its rigor and likelihood of success.

(3) Within 60 days of completion of (2), above, the Assistant Administrator shall complete the necessary design and evaluations of the pilot program and seek such permits or other regulatory authorizations as may be required under federal law for its prompt implementation and evaluation by the Assistant Administrator, the Commissioner or such other parties as they determine most suitable.

(4) The Assistant Administrator and the Commissioner shall seek to commence implementation of the pilot program in 201~~65~~ or as soon thereafter as is possible, and shall conduct such pilot for such period of time as needed to evaluate the efficacy of the program to improve survivals across a range of environmental conditions.

(5) The Assistant Administrator and the Commissioner shall jointly report annually to the Senate Environment and Public Works Committee and the House Committee on Natural Resources their progress in implementing this section, estimated survival rates through the Delta for both juvenile salmonids that were barged through the Delta and those that were not barged, and if survival rates are significantly higher for barged fish as compared to other outmigrating smolts, the Assistant Administrator's and Commissioner's recommendations regarding broadening the pilot program and any relevant recommendations pursuant to section 203.

(6) The pilot program is hereby found to be consistent with the requirements of the Central Valley Project Improvement Act (Public Law 102-575). No provision, plan or definition established or required by the Central Valley Project Improvement Act (Public Law 102-575) shall be used to prohibit the imposition of the pilot program, or to prevent the accomplishment of its goals.

(b) Tagging studies.

(1) IN GENERAL.—The Assistant Administrator, in collaboration with the Interagency Ecological Program and other affected interests, Delta science partners, shall implement tagging studies, including acoustic telemetry and passive integrated transponder PIT-tagging studies as appropriate, wherein habitat, predators, flow conditions, or other factors are experimentally altered and the behavior and survival of tagged juvenile salmonids are observed. Studies may also be conducted to aid in the understanding of Chinook salmon and steelhead abundance, distribution, and survival.

(2) SAMPLING.—The sampling—

(A) shall include recording water quality and tidal data;

(B) ~~shall~~ will be designed to aid in the understanding of salmonid abundance, distribution, and movements throughout the Bay Delta, including estimates of through Delta survival from Knights Landing or from Mossdale to Chipp's Island; and

(C) ~~shall~~ will supplement, not supplant, ongoing acoustic tag and coded wire survival studies in the San Joaquin and Sacramento Rivers which the Assistant Administrator determines are crucial for trend monitoring.

(c) The Assistant Administrator shall accept and review recommendations from ~~other affected interests, including~~ Central Valley Project and State Water Project ~~service area water~~ contractors, on studies of other alternative management measures that may increase the survival of listed salmonid species.

SEC. 203. PROCESS FOR ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE.

(a) General directive. The reasonable and prudent alternative described in the salmonid biological opinion allows for and anticipates adjustments in ~~Central Valley Project and State Water Project project~~ operation parameters to reflect the best scientific and commercial data currently available, and authorizes efforts to test and evaluate improvements in operations that will meet applicable regulatory requirements and maximize ~~Central Valley Project and State Water Project~~ water supplies ~~and reliability~~. Implementation of the reasonable and prudent alternative described in the salmonid biological opinion shall be adjusted accordingly as new scientific and commercial data are developed. The Commissioner and the Assistant Administrator shall fully utilize these authorities as described below.

(b) Annual reviews of certain ~~Central Valley Project and State Water Project project~~ operations. No later than December 31, 2016, and at least annually thereafter,

(1) The Commissioner, with the assistance of the Assistant Administrator, shall examine and identify adjustments to the initiation of Action IV.2.3 as set forth in the Biological Opinion and Conference Opinion on the Long-Term Operations of the Central Valley Project and State Water Project, Endangered Species Act Section & Consultation issued by the National Marine Fisheries Service on June 4, 2009 pertaining to negative OMR flows, subject to paragraph (5).

(2) The Commissioner, with the assistance of the Assistant Administrator, shall examine and identify adjustments in the timing, triggers or other operational details relating to the implementation of pumping restrictions in Action IV.2.1 pertaining to the inflow to export ~~ratio, requirements~~, subject to paragraph (5).

(3) Pursuant to the consultation and assessments carried out under paragraphs (1) and (2) of this subsection, the Commissioner and the Assistant Administrator shall jointly make recommendations to the Secretary of the Interior and to the Secretary of Commerce on adjustments to project operations that, in the exercise of the adaptive management provisions of the salmonid biological opinion, will reduce water supply impacts of the salmonid biological opinion on the Central Valley Project and the California State Water Project and are consistent with the requirements of applicable law and as further described in subsection (c).

(4) The Secretary of Commerce and the Secretary of the Interior shall direct the Commissioner and Assistant Administrator to implement recommended adjustments to ~~Central Valley Project and State Water Project project~~ operations for which the conditions under subsection (c) are met.

(5) The Assistant Administrator and the Commissioner shall review and identify adjustments to ~~Central Valley Project and State Water Project project~~ operations with water supply restrictions in any successor biological opinion to the salmonid biological opinion, applying the provisions of this section to those water

supply restrictions where there are references to Actions IV.2.1 and IV.2.3.

(c) After reviewing the recommendations under subsection (b), the Secretary of the Interior and the Secretary of Commerce shall direct the Commissioner and the Assistant Administrator to implement those operational adjustments, or any combination, for which, in aggregate:

(1) the net effect on listed species is equivalent to those of the underlying project operational parameters in the salmonid biological opinion, taking into account both

- (i) efforts to minimize the adverse effects of the adjustment to project operations; and
- (ii) whatever additional actions or measures may be implemented in conjunction with the adjustments to operations to offset the adverse effects to listed species, consistent with (d), that are in excess of the adverse effects of the underlying operational parameters, if any; and

(2) the effects of the adjustment can be reasonably expected to fall within the incidental take authorizations.

(d)

(3)(d) When examining and identifying opportunities to offset the potential adverse effect of adjustments to operations under subsection (c)(1)(ii), the Commissioner and the Assistant Administrator shall take into account the potential species survival improvements that are likely to result from other measures which, if implemented in conjunction with such adjustments, would offset adverse effects, if any, of the adjustments. When evaluating offsetting measures, the Commissioner and the Assistant Administrator shall consider the type, timing and nature of the adverse effects, if any, to specific species and ensure that the measures likely provide equivalent overall benefits to the listed species in the aggregate, as long as the change will not cause a significant negative impact on the long-term survival of a listed salmonid species.

(e) Framework for examining opportunities to minimize or offset the potential adverse effect of adjustments to operations.—Not later than December 31, 2016⁶⁵, and every five years thereafter, the Assistant Administrator shall, in collaboration with the Director of the California Department of Fish and Wildlife, based on the best scientific and commercial data available and for each listed salmonid species, issue estimates of the increase in through-Delta survival the Secretary expects to be achieved—

(1) through restrictions on export pumping rates as specified by Action IV.2.3 as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is applicable, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(2) through San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1 as compared to the restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(3) through a trap and barge program based on the experience of other systems to the extent they are comparable, and the study described in section 202, as that information becomes available;

(4) through physical habitat restoration improvements;

(5) through predation control programs;

(6) through the installation of temporary barriers, the management of Cross Channel Gates operations, and other projects affecting flow in the Delta;

(7) through salvaging fish that have been entrained near the entrance to Clifton Court Forebay;

(8) through any other management measures that may provide equivalent or better protections for listed species while maximizing export pumping rates without causing a significant negative impact on the long-term survival of a listed salmonid species; and,

(9) through development and implementation of conservation hatchery programs for salmon and

steelhead to aid in the recovery of listed salmon and steelhead species.

(f) Survival estimates.

(1) To the maximum extent practicable, the Assistant Administrator shall make quantitative estimates of survival such as a range of percentage increases in through-Delta survival that could result from the management measures, and if the scientific information is lacking for quantitative estimates, shall do so on qualitative terms based upon the best available science.

(2) If the Assistant Administrator provides qualitative survival estimates for a species resulting from one or more management measures, the Secretary shall, to the maximum extent feasible, rank the management measures described in subsection (e) in terms of their most likely expected contribution to increased through-Delta survival relative to the other measures.

(3) If at the time the Assistant Administrator conducts the analysis under subsection (b), the Secretary has not issued an estimate of increased through-Delta survival from different management measures pursuant to subsection (e), the Secretary shall compare the protections to the species from different management measures based on the best scientific and commercial data available at the time.

(g) Comparison of adverse consequences for alternative management measures of equivalent protection for a species.—

(1) For the purposes of this subsection and subsection (c)—

(A) The alternative management measure or combination of alternative management measures identified in paragraph (2) shall be known as the “equivalent alternative measure.”

(B) The existing measure or measures identified in subparagraphs (2)(A),(B),(C), or (D) shall be known as the “equivalent existing measure.”

(C) An “equivalent increase in through-Delta survival rates for listed salmonid species” shall mean an increase in through-Delta survival rates that is equivalent when considering the change in through-Delta survival rates for the listed salmonid species in the aggregate, and not the same change for each individual species, as long as the change in survival rates will not cause a significant negative impact on the long-term survival of a listed salmonid species.

(2) As part of the reviews of project operations pursuant to subsection (b), the Assistant Administrator shall determine whether any alternative management measures or combination of alternative management measures listed in subsection (e)(3) through (8) would provide an increase in through-Delta survival rates for listed salmonid species that is equivalent to the increase in through-Delta survival rates for listed salmonid species from the following:

(A) through restrictions on export pumping rates as specified by Action IV.2.3, as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is applicable;

(B) through restrictions on export pumping rates as specified by Action IV.2.3, as compared to a modification of Action IV.2.3 that would provide additional water supplies, other than that described in subparagraph (A);

(C) through San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1, as compared to the restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, or

(D) through San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1, as compared to a modification of Action IV.2.1 that would reduce water supply

impacts of the salmonid biological opinion on the Central Valley Project and the California State Water Project, other than that described in subparagraph (C).

(3) If the Assistant Administrator identifies an equivalent alternative measure pursuant to paragraph (2), the Assistant Administrator shall determine whether

(A) it is technically feasible and within federal jurisdiction to implement the equivalent alternative measure

(B) the State of California, or subdivision thereof, or local agency with jurisdiction has certified in writing to the Assistant Administrator that it has the authority and capability to implement the pertinent equivalent alternative measure, or

(C) the adverse consequences of doing so are less than the adverse consequences of the equivalent existing measure, including a concise evaluation of the adverse consequences to other affected interests.

(4) If the Assistant Administrator makes the findings in subparagraph (3)(A) or (3)(B), the Commissioner shall adjust project operations to implement the equivalent alternative measure in place of the equivalent existing measure in order to increase export rates of pumping to the greatest extent possible while maintaining a net combined effect of equivalent through-Delta survival rates for the listed salmonid species.

(h) Tracking adverse effects beyond the range of effects accounted for in the salmonid biological opinion and coordinated operation with the smelt biological opinion.

(1) Among the adjustments to the project operations considered through the adaptive management process under this section, the Assistant Administrator and the Commissioner shall

(A) Evaluate the effects on listed salmonid species and water supply of the potential adjustment to operational criteria described in subparagraph (B); and

(B) Consider requiring that before some or all of the provisions of Actions IV.2.1. or IV.2.3 are imposed in any specific instance, the Assistant Administrator show that the implementation of these provisions in that specific instance is necessary to avoid a significant negative impact on the long-term survival of a listed salmonid species.

(2) The Assistant Administrator, the Director and the Commissioner, in coordination with State officials as appropriate, shall establish operational criteria to coordinate management of OMR flows under the smelt and salmonid biological opinions, in order to take advantage of opportunities to provide additional water supplies from the coordinated implementation of the biological opinions.

(3) The Assistant Administrator and the Commissioner shall document the effects of any adaptive management decisions related to the coordinated operation of the smelt and salmonid biological opinions that prioritizes the maintenance of one species at the expense of the other.

(i) Real-Time Monitoring and Management. Notwithstanding the calendar based triggers described in the salmonid biological opinion Reasonable and Prudent Alternative, operations of the Central Valley Project and the State Water Project shall not be the Reasonable and Prudent Alternative unless current monitoring data indicate that the actions described in the Reasonable and Prudent Alternative are reasonably required to avoid a negative impact on the long-term survival of a listed salmonid species. The Assistant Administrator and the Commissioner shall, through the NMFS adaptive management salmonid biological opinion provisions, analyze whether date certain triggers that limit OMR reverse flow to 5000 cubic feet per second could be adjusted to instead use real time migration information on salmonids. If the analysis shows that the use of real time information to trigger OMR flow limitations would improve water supply without causing a significant negative impact on long term survival of Winter run Chinook salmon, then such real time management triggers shall be implemented.

- (j) If the quantitative estimates of through-Delta survival established by the Secretary for the management measures in (b)(2) exceed the through-Delta survival established for the RPAs, the Secretary shall evaluate and implement the management measures in (b)(2) as a prerequisite to implementing the RPAs contained in the BiOps.
- (k) Consistent with Section 706 of Title 5 of the United States Code, decisions of the Assistant Administrator and the Commissioner described in paragraphs (b) through (j) of Section 203 shall be made in writing, on the basis of best scientific and commercial data currently available, and shall include an explanation of the data examined and the connection between those data and the choice made. document the significant facts upon which such decisions are made.

SEC. 204. PILOT PROGRAM TO PROTECT NATIVE ANADRAMOUS FISH IN THE STANISLAUS RIVER.

(a) ESTABLISHMENT OF NONNATIVE PREDATOR FISH REMOVAL PILOT PROGRAM.—The Secretary of Commerce and the districts, in collaboration consultation with the United States Fish and Wildlife Service, shall jointly develop and conduct a nonnative predator fish removal pilot program to remove nonnative striped bass, smallmouth bass, largemouth bass, black bass, and other nonnative predator fishes species from the Stanislaus River, California. The pilot program shall—

- (1) be scientifically based;
- (2) include methods to quantify the number and size of predator fishes removed each year, the impact of such removal on the overall abundance of predator fishes, and the impact of such removal on the populations of juvenile anadromous fish found in the Stanislaus River by, among other things, evaluating the number of juvenile anadromous fish that migrate past the rotary screw trap located at Caswell;
- (3) among other methods, use wire fyke trapping, portable resistance board weirs, and boat electrofishing;
- (4) be developed, including the application for all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) for the performance of the pilot program, not later than 6 months after the date of the enactment of this Act;
- (5) be implemented as quickly as possible following the issuance of all necessary scientific research and species enhancement permits needed to begin the pilot program; and
- (6) be implemented for a period of 7 consecutive calendar years.

(b) MANAGEMENT.—The management of the pilot program shall be the joint responsibility of the Secretary and the districts. Such parties shall work collaboratively to ensure the performance of the pilot program, and shall discuss and agree upon, among other things, changes in the structure, management, personnel, techniques, strategy, data collection, reporting, and conduct of the pilot program.

(c) CONDUCT.—

(1) IN GENERAL.—By agreement between the Secretary and the districts, the pilot program may be conducted by their own personnel, qualified private contractors hired by the districts, personnel of, on loan to, or otherwise assigned to the National Marine Fisheries Service, or a combination thereof.

(2) PARTICIPATION BY THE NATIONAL MARINE FISHERIES SERVICE.—If the districts elect to conduct the program using their own personnel or qualified private contractors hired by them in accordance with paragraph (1), the Secretary may assign an employee of, on loan to, or otherwise assigned to the National Marine Fisheries Service, to be present for all activities performed in the field.

Such presence shall ensure compliance with the agreed-upon elements specified in subsection (b). The districts shall pay the cost of such participation in accordance with subsection (d).

(3) TIMING OF ELECTION.—The districts shall notify the Secretary of their election on or before October 15 of each calendar year of the pilot program. Such an election shall apply to the work performed in the subsequent calendar year.

(d) FUNDING.—

(1) IN GENERAL.—The districts shall be responsible for 100 percent of the cost of the pilot program.

(2) CONTRIBUTED FUNDS.—The Secretary may accept and use contributions of funds from the districts to carry out activities under the pilot program.

(3) ESTIMATION OF COST.—On or before December 1 of each year of the pilot program, the Secretary shall submit to the districts an estimate of the cost to be incurred by the National Marine Fisheries Service for the pilot program in the following calendar year, if any, including the cost of any data collection and posting under subsection (e). If an amount equal to the estimate is not provided through contributions pursuant to paragraph (2) before December 31 of that year—

(A) the Secretary shall have no obligation to conduct the pilot program activities otherwise scheduled for such following calendar year until such amount is contributed by the districts; and

(B) the districts may not conduct any aspect of the pilot program until such amount is contributed by the districts.

(4) ACCOUNTING.—On or before September 1 of each year, the Secretary shall provide to the districts an accounting of the costs incurred by the Secretary for the pilot program in the preceding calendar year. If the amount contributed by the districts pursuant to paragraph (2) for that year was greater than the costs incurred by the Secretary, the Secretary shall—

(A) apply the excess contributions to costs of activities to be performed by the Secretary under the pilot program, if any, in the next calendar year; or

(B) if no such activities are to be performed, repay the excess contribution to the districts.

(e) REPORTING AND EVALUATION.—

(1) IN GENERAL.—On or before the 15th day of each month, the Secretary shall post on the Internet website of the National Marine Fisheries Service a tabular summary of the raw data collected under the pilot program in the preceding month.

(2) REPORT.—On or before June 30 of the year following the completion of the pilot program, the Secretary and the districts shall jointly submit for peer review a report that—

(A) discusses the findings and conclusions of the pilot program;

(B) synthesizes the data collected under paragraph (1); and

(C) makes recommendations for further study and action.

(f) PERMITS PROCESS.—

(1) REQUIREMENT.—Not later than 180 days after the filing by the Secretary and the districts of an application for scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) for the pilot program, the Secretary of the Interior, the Secretary of Commerce, or both, as appropriate, shall issue to the National Marine Fisheries Service and the districts all such permits that are necessary for the performance of the pilot program. Each such permit shall authorize activities under the permits to be carried out by the districts and by the National Marine Fisheries Service.

(2) DELEGATION OF AUTHORITY.—The districts and the Secretary may delegate the authority to conduct activities under such permits to any qualified private contractor retained in accordance with subsection (c).

(3) FAILURE TO ISSUE PERMITS.—The pilot program, including amendments thereto by the appropriate Federal agencies, shall constitute a conservation plan that complies with section 10(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(2)) if the Secretaries have not carried out paragraph (1) within 270 days after the filling of an application in accordance with such paragraph.

(4) TREATMENT OF STRIPED BASS.—For purposes of the application of the Central Valley Project Improvement Act (title III of Public Law 102–575) with respect to the pilot program, striped bass shall not be treated as anadromous fish.

(g) NEPA.—

(1) LIMITATION ON APPLICATION.—If the Secretaries have not carried out subsection (f)(1) within 365 days after the filing by the Secretary of Commerce and the districts of an application referred to in that subsection, section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) shall not apply with respect to this section and the issuance of any permit under this section, during the 7-year period beginning on the date of the submission of such application.

(2) EMERGENCY ENVIRONMENTAL REVIEWS.—The Secretary of the Interior and the Secretary of Commerce shall consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as necessary to expedite the benefits of the pilot program for the conservation of threatened species and endangered species.

(h) DEFINITIONS.—For the purposes of this section:

(1) DISTRICTS.—The term “districts” means the Oakdale Irrigation District and the South San Joaquin Irrigation District, California.

(2) PILOT PROGRAM.—The term “pilot program” means the nonnative predator fish removal pilot program established under this section.

(3) SECRETARY OF COMMERCE.—The term “Secretary of Commerce” means the Secretary of Commerce acting through the National Marine Fisheries Service.

(i) STATE LAW PREEMPTED.—

(1) IN GENERAL.—Any restriction imposed under California law on the catch, take, or harvest of any nonnative or introduced aquatic or terrestrial species that preys upon anadromous fish and that occupies or is found in the Stanislaus River, or the permitting thereof, is hereby void and is preempted.

(2) STATE PERMITS NOT REQUIRED.—Neither the districts nor the Secretaries are required to obtain a Scientific Collection Permit or any other permit or authorization from the California Department of Fish and Wildlife or any other division or instrumentality of the State of California pursuant to section 1002(a) of the California Fish and Game Code, section 5514(a) of the California Fish and Game Code, section 650 or title 14 of the California Code of Regulations, or any other provision of California law to implement any aspect of the pilot program.

(j) SUNSET.—The authorities provided under this section shall expire 7 years after date of the issuance of the permits referred to in subsection (f)(1).

TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT RELIEF

SEC. 301. FINDINGS.

Congress finds that—

Updated 5-1-15

(1) Based on the congressional findings in Sec. 2 of this Act, it is appropriate and necessary for federal agencies to exercise the maximum amount of flexibility provided to them under the applicable laws and regulations to maximize delivery of water supplies while providing substantially similar levels of protection for listed species.

SEC. 302. DEFINITIONS.

In this title:

(1) CENTRAL VALLEY PROJECT.—The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4707).

(2) RECLAMATION PROJECT.—The term “Reclamation Project” means a project constructed pursuant to the authorities of the reclamation laws and whose facilities are wholly or partially located in the State.

(3) SECRETARIES.—The term “Secretaries” means—

- (A) the Administrator of the Environmental Protection Agency;
- (B) the Secretary of Agriculture;
- (C) the Secretary of Commerce; and
- (D) the Secretary of the Interior.

(4) STATE WATER PROJECT.—The term “State Water Project” means the water project described by California Water Code section 11550 et seq., and operated by the California Department of Water Resources.

(5) State.—The term “State” means the State of California.

SEC. 303. OPERATIONAL FLEXIBILITY IN TIMES OF DROUGHT.

(a) Water Supplies.—

(1) IN GENERAL.—For the period of time such that in any year that the Sacramento Valley Index is 6.5 or lower, or at the request of the State of California, and until two succeeding years following either of those events have been completed where the final Sacramento Valley Index is 7.8 or greater, the Secretaries shall provide the maximum quantity of water supplies practicable to all individuals or district who receive Central Valley Project water under water service or repayments contracts, water rights settlement contracts, ~~or exchange contracts, or refuge contracts or agreements~~ entered into prior to or after the date of enactment of this title; State Water Project contractors, and any other tribe, locality, water agency, or municipality in the State, by approving, consistent with applicable laws (including regulations), projects and operations to provide additional water supplies as quickly as practicable based on available information to address the emergency conditions.

(b) Administration.—In carrying out subsection (a), the Secretaries shall, consistent with applicable laws (including regulations)—

(1) issue all necessary permit decisions under the authority of the Secretaries not later than 30 days after the date on which the Secretaries receive a completed application from the State to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality for the State Water Project and the Central Valley Project south of Delta water contractors and other water users, on the condition that the barriers or operable gates—

(A) do not result in a significant negative impact on the long-term survival of listed species within the Delta and provide benefits or have a neutral impact on in-Delta water user water quality; and

- (B) are designed so that formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) are not necessary;
- (2) require the Director of the United States Fish and Wildlife Service and the Commissioner of Reclamation—
- (A) to complete, not later than 30 days after the date on which the Director or the Commissioner receives a complete written request for water transfer, all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on the request; and
- (B) to approve any water transfer request described in subparagraph (A) to maximize the quantity of water supplies available for nonhabitat uses, on the condition that actions associated with the water transfer comply with applicable Federal laws (including regulations);
- (3) adopt a 1:1 inflow to export ratio, as measured as a 3-day running average at Vernalis during the period beginning on April 1, and ending on May 31, absent a determination in writing that a more restrictive inflow to export ratio is required to avoid a ~~significant~~ negative impact on the long-term survival of a listed salmonid species; provided that the 1:1 inflow to export ratio shall apply for the increment of increased flow of the San Joaquin River resulting from the voluntary sale, transfers, or exchanges of water from agencies with rights to divert water from the San Joaquin River or its tributaries and provided that ~~Delta conditions are suitable to allow the~~ movement of the acquired, transferred, or exchanged water through the Delta consistent with the Central Valley Project's and the State Water Project's permitted water rights and provided that movement of the Central Valley Project water is consistent with the requirements of Section 3405(a)(1)(H) of the Central Valley Project Improvement Act.
- (4) allow and facilitate, consistent with existing priorities, water transfers through the C.W. "Bill" Jones Pumping Plant or the Harvey O. Banks Pumping Plant from April 1 to November 30 provided water transfers comply with state law, including the California Environmental Quality Act.
- (c) Accelerated Project Decision and Elevation.—
- (1) IN GENERAL.—On request by the Governor of the State, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions relating to a Federal project or operation, or to local or State projects or operations that require decisions by the Secretary of the Interior or the Secretary of Commerce to provide additional water supplies if the project's or operation's purpose is to provide relief for emergency drought conditions pursuant to subsections (a) and (b).
- (2) REQUEST FOR RESOLUTION.—
- (A) IN GENERAL.—On request by the Governor of the State, the head of a Federal agency referenced in paragraph (1), or the head of another Federal agency responsible for carrying out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide relief for emergency drought conditions.
- (B) MEETING.—The Secretary of the Interior shall convene a meeting requested under subparagraph (A) not later than 7 days after the date on which the meeting request is received.
- (3) NOTIFICATION.—On receipt of a request for a meeting under paragraph (2), the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including information on the project to be reviewed and the date of the meeting.
- (4) DECISION.—Not later than 10 days after the date on which a meeting is requested under paragraph (2), the head of the relevant Federal agency shall issue a final decision on the project, subject to subsection (e)(2).

(5) MEETING CONVENED BY SECRETARY.—The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

(d) Application.—To the extent that a Federal agency, other than the agencies headed by the Secretaries, has a role in approving projects described in subsections (a) and (b), this section shall apply to those Federal agencies.

(e) Limitation.—Nothing in this section authorizes the heads of applicable Federal agencies to approve projects—

- (1) that would otherwise require congressional authorization; or
- (2) without following procedures required by applicable law.

(f) Drought Plan. For the period of time such that in any year that the Sacramento Valley index is 6.5 or lower, or at the request of the State of California, and until two succeeding years following either of those events have been completed where the final Sacramento Valley Index is 7.8 or greater. The Secretaries of Commerce and the Interior, in consultation with appropriate State officials, shall develop a drought operations plan that is consistent with the provisions of this Act including the provisions that are intended to provide additional water supplies that could be of assistance during the current drought.

SEC. 304. OPERATION OF CROSS-CHANNEL GATES.

(a) In General.—The Secretary of Commerce and the Secretary of the Interior shall jointly—

(1) authorize and implement activities to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using findings from the United States Geological Survey on diurnal behavior of juvenal salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits for the duration of the drought emergency declaration of the State, and for the period of time such that in any year that the Sacramento Valley index is 6.5 or lower, or at the request of the State of California, and until two succeeding years following either of those events have been completed where the final Sacramento Valley Index is 7.8 or greater, consistent with operational criteria and monitoring criteria set forth into the Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions of the California State Water Resources Control Board, effective January 31, 2014 (or a successor order) and other authorizations associated with it;

(2) with respect to the operation of the Delta Cross Channel Gates described in paragraph (1), collect data on the impact of that operation on—

- (A) species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);
- (B) water quality; and
- (C) water supply;

(3) consistent with knowledge gained from activities carried out during 2014 and 2015, collaborate with the California Department of Water Resources to install a deflection barrier at Georgiana Slough in coordination with Delta Cross Channel Gate diurnal operations to protect migrating salmonids;

(4) evaluate the combined salmonid survival in light of activities carried out pursuant to paragraphs (1) through (3) in deciding how to operate the Delta Cross Channel gates to enhance salmonid survival and water supply benefits; and

(5) not later than May 15, 2016, submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a written report on the

extent to which the gates are able to remain open.

(b) Recommendations.—After assessing the information collected under subsection (a), the Secretary of the Interior shall recommend revisions to the operation of the Delta Cross-Channel Gates, to the Central Valley Project, and to the State Water Project, including, if appropriate, any reasonable and prudent alternative contained in the biological opinion issued by the National Marine Fisheries Service on June 4, 2009, that are likely to produce water supply benefits without causing a significant negative impact on the long-term survival of the listed species within the Delta or on water quality.

SEC. 305. FLEXIBILITY FOR EXPORT/INFLOW RATIO.

For the period of time such that in any year that the Sacramento Valley index is 6.5 or lower, or at the request of the State of California, and until two succeeding years following either of those events have been completed where the final Sacramento Valley Index is 7.8 or greater, the Commissioner of the Bureau of Reclamation shall continue to vary the averaging period of the Delta Export/Inflow ratio pursuant to the California State Water Resources Control Board decision D1641—

- (1) to operate to a 35 percent Export/Inflow ratio with a 3 day averaging period on the rising limb of a Delta inflow hydrograph; and
- (2) to operate to a 14 day averaging period on the falling limb of the Delta inflow hydrograph.

SEC. 306. EMERGENCY ENVIRONMENTAL REVIEWS.

(a) To minimize the time spent carrying out environmental reviews and to deliver water quickly that is needed to address emergency drought conditions in the State during the duration of an emergency drought declaration, the head of each applicable Federal agency shall, in carrying out this Act, consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations), to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) during the emergency. (b) For the purposes of this section, a Secretary may deem a project to be in compliance with all necessary environmental regulations and reviews if the Secretary determines that the immediate implementation of the project is necessary to address:

- (1) human health and safety; or
- (2) a specific and imminent loss of agriculture production upon which an identifiable region depends for 25 percent or more of its tax revenue used to support public services including schools, fire or police services, city or county health facilities, unemployment services or other associated social services.

SEC. 307. INCREASED FLEXIBILITY FOR REGULAR PROJECT OPERATIONS.

(a) The Secretaries shall, consistent with applicable laws (including regulations)—

- (1) help meet the contract water supply needs of Central Valley Project refuges through the improvement or installation of water conservation measures, water conveyance facilities, and wells to use groundwater resources, on the condition that those activities may only be accomplished by using funding made available under the Water Assistance Program or Reclamation programs of the Department of the Interior; and

(2b) make available to individuals or districts who receive water from the United States under water rights settlement contracts, exchange contracts, water service or repayment contracts the additional water obtained from the activities carried out under subparagraph (1A);

(b2) in coordination with the Secretary of Agriculture, enter into an agreement with the National Academy of Sciences to conduct a comprehensive study, to be completed not later than 1 year after the date of enactment of this Act, on the effectiveness and environmental impacts of saltcedar biological control efforts on increasing water supplies and improving riparian habitats of the Colorado River and its principal tributaries, in the State and elsewhere;

(3c) in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, implement offsite upstream projects in the Delta and upstream Sacramento River and San Joaquin basins that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to activities carried out pursuant this Act, as determined by the Secretaries;

(4d) manage reverse flow in the Old and Middle Rivers at -6,100 cubic feet per second if real-time monitoring indicates that flows of -6,100 cubic feet per second or more negative can be established for specific periods without causing a significant negative impact on the long term survival of the Delta smelt, or if real-time monitoring does not support flows of -6,100 cubic feet per second then manage Old and Middle River flows at -5,000 cubic feet per second may be made subject to Sections 103(e)(3) and (4);

(5e) as soon as practicable after the date of enactment of this Act and pursuant to existing authority available to the Secretary of the Interior, participate in, issue grants, or otherwise provide funding for pilot projects to increase water in reservoirs in regional river basins experiencing extreme, exceptional, or sustained drought that have a direct impact on the water supply of the State, including the Colorado River Basin, on the condition that any participation, grant, or funding by the Secretary of the Interior with respect to the Upper Division shall be with or to the respective State; and

(6f) use all available scientific tools to identify any changes to real-time operations of the Bureau of Reclamation, State, and local water projects that could result in the availability of additional water supplies.

SEC. 308. TEMPORARY OPERATIONAL FLEXIBILITY FOR FIRST FEW STORMS OF THE WATER YEAR

(a) In general. Consistent with avoiding a significant negative impact on the long-term survival in the short-term upon listed fish species beyond the range of those authorized under the Endangered Species Act and other environmental protections under subsection (e), the Secretaries shall authorize the Central Valley Project and the State Water Project, combined, to operate at levels that result in negative Old and Middle River flows at -7500 cubic feet per second (based on United States Geological Survey gauges on Old and Middle Rivers) daily average for 56 consecutive days after October 1 as described in subsection (c).

(b) Days of temporary operational flexibility. The temporary operational flexibility described in subsection (b) shall be authorized on days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey.

(c) Compliance with ESA authorizations. In carrying out this section, the Secretaries may continue to impose any requirements under the smelt and salmonid biological opinions during any period of temporary

operational flexibility as they determine are reasonably necessary to avoid an additional significant negative impacts on the long-term survival of a listed fish species beyond the range of those authorized under the Endangered Species Act, provided that the requirements imposed do not reduce water supplies available for the Central Valley Project and the State Water Project.

(d) Other environmental protections.

- (1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law;
- (2) During the first flush of sediment out of the Delta in each water year, and provided that such determination is based upon objective evidence, OMR flow may be managed at rates less negative than -5000 cubic feet per second for a minimum duration to avoid movement of adult Delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants;
- (3) This section shall not affect the application of the salmonid biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those authorized under the Endangered Species Act. In addition to any other actions to benefit water supply, the Secretary and the Secretary of Commerce shall consider allowing through-Delta water transfers to occur during this period if they can be accomplished consistent with Section 3405(a)(1)(H) of the Central Valley Project Improvement Act. Water transfers solely or exclusively through the State Water Project are not required to be consistent with Section 3405(a)(1)(H) of the Central Valley Project Improvement Act.
- (4) During operations under this section, the Commissioner of Reclamation, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to ensure incidental take levels are not exceeded, and to identify potential negative impacts and actions, if any, necessary to mitigate impacts of the temporary operational flexibility to species listed under the Endangered Species Act, 16 U.S.C. 1531-1544; and
- (5) The Commissioner is authorized to take any action, including the transfer of appropriated funds between accounts that, in the Commissioner's judgment, are necessary to mitigate the impacts of such operations as long as any such mitigation is consistent with the requirements of this section.

(e) Technical adjustments to target period. If, before temporary operational flexibility has been implemented on 56 consecutive days, the Secretaries operate the Central Valley Project and the State Water Project combined at levels that result in Old and Middle River flows less negative than -7500 cubic feet per second during days of temporary operational flexibility as defined in subsection (c), the duration of such operation shall not be counted toward the 56 consecutive days specified in subsection (b).

(f) Emergency consultation, effect on running averages.

- (1) If necessary to implement the provisions of this section, the Commissioner is authorized to take any action necessary to implement this section for up to 56 days. If during the 56 days the Commissioner determines that actions necessary to implement this section will exceed 56 days, the Commissioner shall use the emergency consultation procedures under the Endangered Species Act and its implementing regulation at 50 CFR 402.05 to temporarily adjust the operating criteria under the biological opinions,

(A) solely for extending beyond the 56 consecutive days for additional days of temporary operational flexibility—

- (i) no more than necessary to achieve the purposes of this section consistent with the environmental protections in subsections (d) and (e); and

(ii) including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day and 14-day running averages of tidally filtered daily Old and Middle River flow requirements under the biological opinions, or

(B) for other adjustments to operating criteria or to take other urgent actions to address water supply shortages for the least amount of time or volume of diversion necessary as determined by the Commissioner.

(2) Following the conclusion of the 56 consecutive days of temporary operational flexibility, or the extended number of days covered by the emergency consultation procedures, the Commissioner shall not reinitiate consultation on these adjusted operations, and no mitigation shall be required, if the effects on listed fish species of these operations under this section remain within the range of those authorized under the Endangered Species Act. If the Commissioner reinitiates consultation, no mitigation measures shall be required.

(g) Level of detail required for analysis. In articulating the determinations required under this section, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short time frame permitted for timely decision-making in response to changing conditions in the Delta.

SEC. 309. EXPEDITING WATER TRANSFERS.

(a) In General.—Section 3405(a) of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4709(a)) is amended—

- (1) by redesignating paragraphs (1) through (3) as paragraphs (4) through (6), respectively;
- (2) in the matter preceding paragraph (4) (as so designated)—
 - (A) in the first sentence, by striking “In order to” and inserting the following:
 - “(1) IN GENERAL.—In order to”; and
 - (B) in the second sentence, by striking “Except as provided herein” and inserting the following:
 - “(3) TERMS.— Except as otherwise provided in this section”; and
 - (3) by inserting before paragraph (3) (as so designated) the following:
 - “(2) EXPEDITED TRANSFER OF WATER.—The Secretary shall take all necessary actions to facilitate and expedite transfers of Central Valley Project water in accordance with—
 - “(A) this Act;
 - “(B) any other applicable provision of the reclamation laws; and
 - “(C) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).”;
- (4) in paragraph (4) (as so designated)—
 - (A) in subparagraph (A), by striking “to combination” and inserting “or combination”; and
 - (B) by striking “3405(a)(2) of this title” each place it appears and inserting “(5)”;
- (5) in paragraph (5) (as so designated), by adding at the end the following:
 - “(E) The contracting district from which the water is coming, the agency, or the Secretary shall determine if a written transfer proposal is complete within 45 days after the date of submission of the proposal. If the contracting district or agency or the Secretary determines that the proposal is

incomplete, the district or agency or the Secretary shall state with specificity what must be added to or revised for the proposal to be complete.”; and

(6) in paragraph (6) (as so designated), by striking “3405(a)(1)(A)-(C), (E), (G), (H), (I), (L), and (M) of this title” and inserting “(A) through (C), (E), (G), (H), (I), (L), and (M) of paragraph (4)”.

(b) Conforming Amendments.—The Central Valley Project Improvement Act (Public Law 102–575) is amended—

(1) in section 3407(c)(1) (106 Stat. 4726), by striking “3405(a)(1)(C)” and inserting “3405(a)(4)(C)”; and

(2) in section 3408(i)(1) (106 Stat. 4729), by striking “3405(a)(1) (A) and (J) of this title” and inserting “subparagraphs (A) and (J) of section 3405(a)(4)”

SEC. 310. Additional Emergency Consultation.

For adjustments to operating criteria other than under subpart (1) of Section 309(g) of this Act or to take urgent actions to address water supply shortages for the least amount of time or volume of diversion necessary as determined by the Commissioner, no mitigation measures shall be required during any year that the Sacramento Valley index is 6.5 or lower, or at the request of the State of California, and until two succeeding years following either of those events have been completed where the final Sacramento Valley Index is 7.8 or greater, and any mitigation measures imposed must be based on quantitative data and required only to the extent that such data demonstrates actual harm to species.

SECTION 311. TRANSFER THE NEW MELONES UNIT, CENTRAL VALLEY PROJECT TO INTERESTED PROVIDERS.

(a) DEFINITIONS.—For the purposes of this Act, the

following terms apply:

(1) INTERESTED LOCAL WATER AND POWER

PROVIDERS.—The term “interested local water and

power providers” includes the Calaveras County

Water District, Central San Joaquin Water Conservation

District, Modesto Irrigation District,

Oakdale Irrigation District, Stockton East Water

District, South San Joaquin Irrigation District,

Tuolumne Utilities District, Turlock Irrigation District, and
Union Public Utilities District.

(2) NEW MENLONES UNIT, CENTRAL VALLEY

PROJECT.—The term “New Melones Unit, Central Valley project” means all Federal reclamation projects located within or diverting water from or to the watershed of the Stanislaus and San Joaquin rivers and their tributaries as authorized by the Act of August 26, 1937 (50 Stat. 850) and all Acts amendatory or supplemental thereto, including the Act of October 23, 1962 (76 Stat. 1173).

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(b) NEGOTIATIONS.—Notwithstanding any other provision of law, not later than 180 days after the date of the enactment of this Act, the Secretary shall enter into negotiations with interested local water and power providers for the transfer ownership, control, and operation of the New Melones Unit, Central Valley Project to interested local water and power providers within the State of California.

(c) TRANSFER.—The Secretary may transfer the New Melones Unit, Central Valley project in accordance with an agreement reached pursuant to negotiations conducted under subsection (b).

Section 312. Report

Not later than 360 days after the date of the enactment of this Act, and every 6 months thereafter, the Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report that describes, in detail—

- (1) if an agreement is reached pursuant to negotiations conducted under section 1(b), the terms of that agreement;
- (2) the status of formal discussions with interested

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local water and power providers for the transfer
of ownership, control, and operation of the New
Melones Unit, Central Valley Project to interested

local water and power providers;

(3) all unresolved issues that are preventing
execution of an agreement for the transfer of ownership,
control, and operation of the New Melones
Unit, Central Valley project to interested local water

and power providers;

(4) an analysis and review of studies, reports,
discussions, hearing transcripts, negotiations, and
other information about past and present formal discussions
that—

(A) have a serious impact on the progress
of the formal discussions;

(B) explain or provide information about
the issues that prevent progress or
finalization

of formal discussions; or

(C) are, in whole or in part, preventing
execution of an agreement for the
transfer; and

(5) any actions the Secretary recommends that
the United States should take to finalize
an agreement

for that transfer.

Section 313

(e) The Commissioner of Reclamation is directed to work with local water and irrigation districts in the Stanislaus River Basin to ascertain the water storage made available by the Draft Plan of Operations in New Melones Reservoir (DRPO) for water conservation programs, conjunctive use projects, water transfers, rescheduled project water and other projects to maximize water storage and ensure the beneficial use of the water resources in the Stanislaus River Basin. All such programs and projects shall be implemented according to all applicable laws and regulations. The source of water for any such storage program at New Melones Reservoir shall be made available under a valid water right, consistent with the State of California water transfer guidelines and any other applicable state water law. The Commissioner shall inform the Congress within 18 months setting forth the amount of storage made available by the DRPO that has been put to use under this program, including proposals received by Reclamation from interested parties for the purpose of this section.

SEC. 312. ESA Applicants

In the event that the Bureau of Reclamation or another federal agency initiates or reinitiates consultation with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service under section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1536(a)(2)), with respect to construction or operation of the Central Valley Project and State Water Project, or any part thereof, the State Water Project ~~E~~contractors and the Central Valley Project ~~E~~contractors will be accorded all the rights and responsibilities extended to applicants in the consultation process.

TITLE IV— CALFED STORAGE FEASIBILITY STUDIES

SEC. 401. The Secretary of the Interior, through the Commissioner of Reclamation, shall—

(1) complete the feasibility studies described in

clauses (i)(I) and (ii)(II) of section 103(d)(1)(A) of

Public Law 108–361 (118 Stat. 1684) and submit

such studies to the appropriate committees of the

House of Representatives and the Senate not later

than December 31, 2015;

(2) complete the feasibility studies described in

clauses (i)(II) and (ii)(I) of section 103(d)(1)(A) of

Public Law 108–361 and submit such studies to the

appropriate committees of the House of Representatives

and the Senate not later than November 30,

2016;

(3) complete the feasibility study described in

section 103(f)(1)(A) of Public Law 108–361 (118

Stat. 1694) and submit such study to the appropriate

Committees of the House of Representatives

and the Senate not later than December 31, 2017;

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and

(4) provide a progress report on the status of

the feasibility studies referred to in paragraphs (1)

through (3) to the appropriate committees of the

House of Representatives and the Senate not later

than 90 days after the date of the enactment of this

Act and each 180 days thereafter until December

31, 2017, as applicable. The report shall include

timelines for study completion, draft environmental

impact statements, final environmental impact statements, and Records of Decision.

SECTION 402. Temperance Flat

(a). Definitions.

For the Purposes of this section:

- (1) PROJECT – The term “Project” means the Temperance Flat Reservoir Project on the Upper San Joaquin River
- (2) RMP- The term “RMP” means the document titled “Bakersfield Field Office, Record of Decision & Approved Resource Management Plan”, dated December 2014
- (3) SECRETARY- The term “Secretary” means the Secretary of the Interior

(b). Applicability of RMP

The RMP and findings related thereto shall have no effect on or applicability to the Secretary’s determination of feasibility of, or on any findings or environmental review documents related to-

- (1) The Project; or
- (2) Actions taken by the Secretary pursuant to section 103(d)(1)(A)(ii)(II) of the CALFEDBay-Delta Authorization Act (Public Law 108-361).

(c). Duties of Secretary Upon Determination of Feasibility.

If the Secretary finds the Project to be feasible, the Secretary shall manage the land recommended in the RMP for designation under the Wild and Scenic Rivers Act (16 U.S.C. 1271-1287) in a manner that does not impede any environmental reviews, preconstruction, construction, or other activities of the Project, regardless of whether or not the Secretary submits any official recommendation to Congress under the Wild and Scenic Rivers Act.

(d) Reserved Water Rights

Effective December 22, 2014, there shall be no Federal reserved water rights to any segment of the San Joaquin River related to the Project as a result of any designation made under the Wild and Scenic Rivers Act (16 U.S.C. 1271-1287).

SEC. 403. CALFED STORAGE ACCOUNTABILITY.

- (1) If the Bureau of Reclamation determines that an environmental review document for the water storage projects referenced in of Section 103(d)(1) of P.L. 108-361 will not be completed according to the schedule specified in Section 401, the Bureau shall notify the Senate Committee on Energy and Natural Resources, the Senate Appropriations Subcommittee on

Energy and Water Development, the House of Representatives Natural Resources Committee, and the House of Representatives Transportation and Infrastructure Committee within 14 days of the determination. The notification shall include:

- (A) An explanation of the delay;
 - (B) The anticipated length of the delay and the revised completion date;
 - (C) The steps that the Bureau will take to mitigate the delay, including, but not limited to, a request to reprogram existing funds appropriated to the Bureau to meet the revised completion deadline.
- (2) The Bureau of Reclamation shall carry out the procedures in subsection (a) for each subsequent delay beyond the revised completion deadline.
- (3) IN GENERAL.—[Subject to paragraph (2),] if the Secretary fails to complete a feasibility study or environmental review required for any water storage project referred to in subsection (a) in accordance with the schedule specified in that subsection, the amounts made available to the Policy and Administration Account of the Bureau of Reclamation for fiscal year 2015 shall be withheld and reduced by an amount equal to the product obtained by multiplying—
- (A) \$20,000; and
 - (B) the number of weeks during the period beginning on the applicable deadline for completion of the feasibility study or environmental review and ending on the date on which the final feasibility study or environmental review is completed.
- (4) DISTRIBUTION.—If the relevant feasibility study or environmental review is delayed beyond the schedule specified in subsection (a), the percentage of withheld funds that shall be released and made available to the Bureau of Reclamation on completion of the feasibility study or environmental review document shall be—
- (A) in the case of a delay the duration of which is less than [or equal to] 90 days, 100 percent of the withheld funds;
 - (B) in the case of a delay the duration of which is more than 90 days but less than [or equal to] 180 days, 75 percent of the withheld funds;
 - (C) in the case of a delay the duration of which is more than 180 days but less than [or equal to] 270 days, 50 percent of the withheld funds;
 - (D) in the case of a delay the duration of which is more than 270 days but less than [or equal to] 1 year, 25 percent of the withheld funds; and
 - (E) in the case of a delay the duration of which is more than 1 year, 0 percent of the withheld funds.

SEC. 404. WATER STORAGE PROJECT CONSTRUCTION.

- (a) The Secretary, acting through the Commissioner of the Bureau of Reclamation, may partner or enter into an agreement on the water storage projects identified in section 103(d)(1) of

the Water Supply Reliability and Environmental Improvement Act (Public Law 108-361) (and Acts supplemental and amendatory to the Act) with local joint powers authorities formed pursuant to State law by irrigation districts and other local water districts and local governments within the applicable hydrologic region, to advance those projects.

(b) If the Secretary determines a project described in Sections 402(a)(1) and (2) is feasible, the Secretary is authorized to carry out the project in a manner that is substantially in accordance with the recommended plan, and subject to the conditions described in the feasibility study, provided that no federal funding shall be used to construct the project.

SEC. 405 . DAM SAFETY PROJECTS WITH INCREASED STORAGE COMPONENT.

(a) Additional Project Benefits.—The Reclamation Safety of Dams Act of 1978 is amended—

 (1) in section 3 (43 U.S.C. 507), by striking “Construction” and inserting “Except as provided in section 5B, construction”; and

 (2) by inserting after section 5A (43 U.S.C. 509a) the following:

“SEC. 5B. ADDITIONAL PROJECT BENEFITS.

 “(a) In General.—Notwithstanding section 3, if the Secretary makes a determination described in subsection (b), the Secretary is authorized to develop any additional project benefit—

 “(1) through the construction of new or supplementary works on a project in conjunction with the activities carried out by the Secretary pursuant to section 2; and

 “(2) subject to the conditions described in the feasibility study relating to the project.

 “(b) Description of Determination.—A determination referred to in subsection (a) is a determination by the Secretary that—

 “(1) an additional project benefit, including but not limited to additional conservation storage capacity, is—

 “(A) necessary; and

 “(B) in the interests of the United States; and

 “(2) the project benefit proposed to be carried out is—

 “(A) feasible; and

 “(B) not inconsistent with the purposes of this Act.

 “(c) Requirements.—The costs associated with developing an additional project benefit under this section shall be—

 “(1) allocated to entity or entities benefitting from the additional conservation storage capacity, subject to agreement between the state and federal funding agencies on such

allocations; and

“(2) repaid in accordance with all applicable provisions of Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).”.

(b) San Luis Reservoir Expansion.—Section 103(f)(1)(A) of Public Law 108–361 (118 Stat. 1694) is amended—

(1) by adding at the end the following:

“(ii) ENVIRONMENTAL REVIEWS AND FEASIBILITY STUDY.—The Commissioner of Reclamation shall submit to Congress—

a final environmental impact statement relating to the San Luis Reservoir by not later than December 31, 2017.”.

TITLE V—WATER RIGHTS PROTECTIONS

SEC. 501. PROTECTIONS FOR STATE WATER PROJECT CONTRACTORS..

(a) IMPLEMENTATION IMPACTS.—The Secretary of the Interior shall confer with the California Department of Fish and Wildlife in connection with the implementation of this Act on potential impacts to any consistency determination for operations of the State Water Project issued pursuant to California Fish and Game Code section 2080.1.

(b) Additional Yield.—If, as a result of the application of this Act, the California Department of Fish and Wildlife requires take authorization under section 2081 of the California Fish and Game Code for operation of the State Water Project in a manner that directly or indirectly results in reduced water supply to the State Water Project, as compared with the water supply available under the smelt biological opinion and the salmonid biological opinion, and as a consequence of the Department’s action, Central Valley Project yield is greater than it would have been absent the Department’s actions, then that additional yield shall be made available to the State Water Project for delivery to State Water Project contractors to offset losses resulting from the Department’s action.

(c) Notification Related to Environmental Protections.—The Secretary of the Interior or the Secretary of Commerce shall notify the Director of the California Department of Fish and Wildlife regarding any changes in the manner in which the smelt biological opinion or the salmonid biological opinion is implemented and shall confirm that such changes are authorized under the applicable biological opinion.

SEC. 502. AREA OF ORIGIN PROTECTIONS.

(a) IN GENERAL.—The Secretary of the Interior is directed, in the operation of the Central Valley Project, to adhere to California’s water rights laws governing water rights priorities and to honor water rights senior to those held by the United States for operation of the Central Valley Project, regardless of the source of priority, including any appropriative water rights initiated

(1) diminishes, impairs, or otherwise affects in any manner any area of origin, watershed of origin, county of origin, or any other water rights protections, including riparian water rights or rights to water appropriated prior to December 19, 1914, provided under California law; or

(2) limits or otherwise affects the application of section 10505, 10505.5, 11128, 11460, 11463, or 12200 through 12220 of the California Water Code or any other provision of California water rights law.

(b) Effect of section.—Nothing in this section affects or modifies any obligation of the Secretary of the Interior under section 8 of [the Act of June 17, 1902 (32 Stat. 390, chapter 1093)].

SEC. 503. NO REDIRECTED ADVERSE IMPACTS.

(a) In General.—The Secretaries shall not take any specific action authorized under this Act that will directly result in the involuntary reduction of water supply to individuals or districts that have in effect contracts for water with the State Water Project or the Central Valley Project, or other water users or purveyors organized under State law that obtain water based on other legal rights, as compared to the water supply that would be provided in the absence of action under this Act.

(b) Action on Determination.—

(1) IN GENERAL.—If, after exploring all options, 1 of the Secretaries makes a final determination that a proposed action under this Act cannot be undertaken because it would be inconsistent with subsection (a)—

(A) the Secretary shall document that determination in writing for that action that includes a statement of the facts relied upon and an explanation of the basis for the decision; and

(B) the Secretary shall comply with any other applicable law that requires or authorizes action under the circumstances.

(2) SUBSTITUTE ACTIONS.—If the Secretary takes a substitute action as so required or authorized, the substitute action must—

(A) be limited to replacement of the specific action identified in paragraph (1);

(B) not be subject to the requirements of this Act; and

(C) comply with other existing laws (including regulations) as applicable, including the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and the salmonid biological opinion and the smelt biological opinion.

(a) IN GENERAL.—The Secretary of the Interior shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including such actions under section 7

SEC. 504. ALLOCATIONS FOR SACRAMENTO VALLEY CONTRACTORS.

(a) ALLOCATIONS.—

(b) Allocations of Water.—

(1) DEFINITION OF YEAR TERMS.—In this subsection, the terms “Above Normal”, “Below Normal”, “Dry”, and “Wet”, with respect to a year, have the meanings given those terms in the Sacramento Valley Water Year Type (40–30–30) Index.

(2) ALLOCATIONS.—Subject to paragraph (3) and subsection (c), the Secretary of the Interior shall in the operation of the Central Valley Project allocate water provided for irrigation purposes to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed in compliance with the following:

(A) Not less than 100 percent of their contract quantities in a “Wet” year.

(B) Not less than 100 percent of their contract quantities in an “Above Normal” year.

(C) Not less than 100 percent of their contract quantities in a “Below Normal” year that is preceded by an “Above Normal” or a “Wet” year.

(D) Not less than 50 percent of their contract quantities in a “Dry” year that is preceded by a “Below Normal”, an “Above Normal”, or a “Wet” year.

(E) In all other years not identified in any of subparagraphs (A) through (D), not less than twice the allocation percentage to south-of-Delta Central Valley Project agricultural water service contractors, up to 100 percent; provided, That nothing in this subparagraph shall preclude an allocation to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed that is greater than twice the allocation percentage to south-of-Delta Central Valley Project agricultural water service contractors.

(3) CONDITIONS.—The Secretary’s actions under paragraph (2) shall be subject to—

(A) the priority of individuals or entities with Sacramento River water rights, including those with Sacramento River settlement contracts, that have priority to the diversion and use of Sacramento River water over water rights held by the United States for operations of the Central Valley Project;

(B) the obligation of the United States to make a substitute supply of water available to the San Joaquin River Exchange Contractors; and

(C) the obligation of the Secretary of the Interior to make water available to managed wetlands pursuant to section 3406(d) of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4714).

(c) Protection of Municipal and Industrial Supplies.—

(1) EFFECT OF SUBSECTION.—Nothing in subsection (b)—

(A) modifies any provision of a water service contract that addresses municipal and

industrial water shortage policies of the Secretary;

(B) affects or limits the authority of the Secretary to adopt or modify municipal and industrial water shortage policies; or

(C) affects or limits the authority of the Secretary to implement municipal and industrial water shortage policies.

(2) EFFECT ON AMERICAN RIVER DIVISION.—Nothing in subsection (b) or the implementation by the Secretary of subsection (b) shall constrain, govern, or affect, directly or indirectly, the operations of the Central Valley Project's American River division or any deliveries from that division or a unit or facility of that division.

(d) Allocations to Contractors.—The allocations made pursuant to subsection (b) shall not affect allocations to Central Valley Project municipal and industrial water service contractors by increasing or decreasing allocations to such contractors, compared to allocations such contractors would have received absent subsection (b).

(e) No Effect on Allocations.—This section shall not—

(1) affect the allocation of water to Friant division [of the Central Valley Project] contractors; or

(2) result in the involuntary reduction in contract water allocations to individuals or entities with contracts to receive water from the Friant division.

(f) Program for Water Rescheduling.—The Secretary shall direct the Commissioner of Reclamation to investigate and, if practicable, develop and implement a program to provide for the opportunity for existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed to reschedule water, provided for under their Central Valley Project contracts, from 1 year to the next, subject to the condition that the program is consistent with existing rescheduling guidelines as utilized by the Bureau of Reclamation for rescheduling water for Central Valley Project water service contractors that are located south of the Delta.

SEC. 505. EFFECT ON EXISTING OBLIGATIONS.

Nothing in this Act preempts or modifies any existing obligation of the United States under Federal reclamation law to operate the Central Valley Project in conformity with State law, including established water rights priorities.

TITLE VI—MISCELLANEOUS

SEC. 601 . AUTHORIZED SERVICE AREA.

(a) In General.—The authorized service area of the Central Valley Project authorized under the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) shall include

the area within the boundaries of the Kettleman City Community Services District, California, as in existence on the date of enactment of this Act.

(b) Long-term Contract.—

(1) IN GENERAL.—Notwithstanding the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) and subject to paragraph (2), the Secretary of the Interior, in accordance with the reclamation laws, shall enter into a long-term contract with the Kettleman City Community Services District, California, under terms and conditions mutually agreeable to the parties, for the delivery of up to 900 acre-feet of Central Valley Project water for municipal and industrial use.

(2) LIMITATION.—Central Valley Project water deliveries authorized under the contract entered into under paragraph (1) shall be limited to the minimal quantity necessary to meet the immediate needs of the Kettleman City Community Services District, California, in the event that local supplies or State Water Project allocations are insufficient to meet those needs.

(c) Permit.—The Secretary shall apply for a permit with the State for a joint place of use for water deliveries authorized under the contract entered into under subsection (b) with respect to the expanded service area under subsection (a), consistent with State law.

(d) Additional Costs.—If any additional infrastructure, water treatment, or related costs are needed to implement this section, those costs shall be the responsibility of the non-Federal entity.

SEC. 602 . OVERSIGHT BOARD FOR RESTORATION FUND.

(a) Report; Advisory Board.—Section 3407 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4726) is amended by adding at the end the following:

“(g) Report on Expenditure of Funds.—

“(1) IN GENERAL.—For each fiscal year, the Secretary, in consultation with the Advisory Board, shall submit to Congress a plan for the expenditure of all of the funds deposited into the Restoration Fund during the preceding fiscal year.

“(2) CONTENTS.—The plan shall include an analysis of the cost-effectiveness of each expenditure.

“(h) Advisory Board.—

“(1) ESTABLISHMENT.—There is established the Restoration Fund Advisory Board (referred to in this section as the ‘Advisory Board’), which shall be composed of 15 members appointed by the Secretary.

“(2) MEMBERSHIP.—

“(A) IN GENERAL.—The Secretary shall appoint members to the Advisory Board that represent the various Central Valley Project stakeholders, of whom—

“(i) 4 members shall be agricultural users of the Central Valley Project;

“(ii) 2 members shall be municipal and industrial users of the Central Valley Project;

“(iii) 3 members shall be power contractors of the Central Valley Project;

“(iv) 1 member shall be a representative of a federal wildlife refuge that contracts for Central Valley Project water supplies with the Bureau of Reclamation;

“(v) 1 member shall have expertise in the economic impact of changes to water operations.

“(B) OBSERVER.—The Secretary and the Secretary of Commerce may each designate a representative to act as an observer of the Advisory Board.

“(C) CHAIRMAN.—The Secretary shall appoint 1 of the members described in subparagraph (A) to serve as Chairman of the Advisory Board.

“(3) TERMS.—The term of each member of the Advisory Board shall be 4 years.

“(4) DATE OF APPOINTMENTS.—The appointment of a member of the Panel shall be made not later than—

(A) the date that is 120 days after the date of enactment of this Act; or

(B) in the case of a vacancy on the Panel described in subsection (c)(2), the date that is 120 days after the date on which the vacancy occurs.

“(5) Vacancies.—

(A) IN GENERAL.—A vacancy on the Panel shall be filled in the manner in which the original appointment was made and shall be subject to any conditions that applied with respect to the original appointment.

(B) FILLING UNEXPIRED TERM.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(C) EXPIRATION OF TERMS.—The term of any member shall not expire before the date on which the successor of the member takes office.

“(6) Removal —A Member of the Panel may be removed from office by the Secretary of the Interior.

“(7) Federal Advisory Committee Act. —The Panel shall not be subject to the requirements of the Federal Advisory Committee Act.

“(8) DUTIES.—The duties of the Advisory Board are—

“(A) to meet not less frequently than semiannually to develop and make recommendations to the Secretary regarding priorities and spending levels on projects and programs carried out under this title;

“(B) to ensure that any advice given or recommendation made by the Advisory Board reflects the independent judgment of the Advisory Board;

“(C) not later than December 31, 2015, and annually thereafter, to submit to the Secretary and Congress the recommendations under subparagraph (A); and

“(D) not later than December 31, 2015, and biennially thereafter, to submit to

Congress a report that details the progress made in achieving the actions required under section 3406.

“(9) ADMINISTRATION.—With the consent of the appropriate agency head, the Advisory Board may use the facilities and services of any Federal agency.”

“(10) Cooperation and Assistance.—

(A) Upon request of the Panel Chairperson for information or assistance to facilitate the carrying out of this section, the Secretary of the Interior shall promptly provide such information, unless otherwise prohibited by law.

(B) Space and Assistance.—The Secretary of the Interior shall provide the Panel with appropriate and adequate office space, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the Panel, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

Sec. 603. WATER SUPPLY ACCOUNTING.

All Central Valley Project water, except Central Valley Project water released from the Friant Division pursuant to the [this needs to change to reflect amendment pertaining to Friant] San Joaquin River Restoration Settlement Act (Public Law 111-11) and water released pursuant to the December 2000 Trinity River Mainstem Fishery Restoration Record of Decision, used to implement an action undertaken for a fishery beneficial purpose that was not imposed by terms and conditions existing in licenses, permits, and other agreements pertaining to the Central Valley Project under applicable State or Federal law existing on October 30, 1992, shall be credited to the quantity of Central Valley Project yield dedicated and managed under this section; provided, that nothing herein shall affect the Secretary’s duty to comply with any otherwise lawful requirement imposed on operations of the Central Valley Project under any provision of federal or state law.

Sec. 604 . IMPLEMENTATION OF WATER REPLACEMENT PLAN.

(a) Not later than October 1, 2016, the Secretary shall update and implement the plan required by Section 3408(j) of Title 34 of Public Law 102-575. The Secretary shall provide reports to the Congress annually describing the progress of implementing the plan required by Section 3408(j) of Title 34 of Public Law 102-575.

If the plan required by paragraph (a) has not increased the yield of the Central Valley Project by 800,000 acre-feet within 5 years of the enactment of this Act, Section 3406(b)(2) of Title 34 of Public Law 102-575 is repealed.

(c)

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Sec. 605 . NATURAL AND ARTIFICIALLY SPAWNED SPECIES.

After the date of the enactment of this title, and regardless of the date of listing, the Secretaries of the Interior and Commerce shall not distinguish between natural-spawned and hatchery-spawned or otherwise artificially propagated strains of a species in making any determination under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) that relates to any anadromous or pelagic fish species that resides for all or a portion of its life in the Sacramento-San Joaquin Delta or rivers tributary thereto.

Sec. 606 . AMENDMENT TO PURPOSES

Section 3402 of the Central Valley Project Improvement Act (106 Stat. 4706) is amended—

- (1) in subsection (f), by striking the period at the end; and
- (2) by adding at the end the following:

“(g) to ensure that water dedicated to fish and wildlife purposes by this title is replaced and provided to Central Valley Project water contractors by December 31, 2018, at the lowest cost reasonably achievable; and

“(h) to facilitate and expedite water transfers in accordance with this Act.”.

Sec. 607 . AMENDMENT TO DEFINITION

Section 3403 of the Central Valley Project Improvement Act (106 Stat. 4707) is amended—

- (1) by amending subsection (a) to read as follows:

“(a) the term ‘anadromous fish’ means those native stocks of salmon (including steelhead) and sturgeon that, as of October 30, 1992, were present in the Sacramento and San Joaquin Rivers and their tributaries and ascend those rivers and their tributaries to reproduce after maturing in San Francisco Bay or the Pacific Ocean;”;
- (2) in subsection (l), by striking “and,”
- (3) in subsection (m), by striking the period and inserting “; and”, and
- (4) by adding at the end the following:

“(n) the term ‘reasonable flow’ means water flows capable of being maintained taking into account competing consumptive uses of water and economic, environmental, and social factors.”.

TITLE VII. REGULATORY STREAMLINING.

SEC. 701. PERMITTING EFFICIENCIES

(a) Definitions

- (1) SECRETARY- The term ‘Secretary’ means the Secretary of the Interior.
- (2) BUREAU- The term ‘Bureau’ means the Bureau of Reclamation.
- (3) QUALIFYING PROJECTS- The term ‘qualifying projects’ means new surface water storage projects in the States covered under the Act of June 17, 1902 (32 Stat. 388, Chapter 1093) and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.) constructed on lands administered by the Department of the Interior or the Department of Agriculture, exclusive of any easement, right-of-way, lease, or any private holding.
- (4) COOPERATING AGENCIES- The term ‘cooperating agency’ means a Federal agency with jurisdiction over a review, analysis, opinion, statement, permit, license, or other approval or decision required for a qualifying project under applicable Federal laws and regulations, or a State agency subject to section 3(c).

(b) Establishment of lead agency and cooperating agencies.

(a) Establishment of Lead Agency- The Bureau is established as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, or other approvals or decisions required under Federal law to construct qualifying projects.

(b) Identification and Establishment of Cooperating Agencies- The Commissioner of the Bureau shall-

- (1) identify, as early as practicable upon receipt of an application for a qualifying project, any Federal agency that may have jurisdiction over a review, analysis, opinion, statement, permit, license, approval, or decision required for a qualifying project under applicable Federal laws and regulations; and
- (2) notify any such agency, within a reasonable timeframe, that the agency has been designated as a cooperating agency in regards to the qualifying project unless that agency responds to the Bureau in writing, within a timeframe set forth by the Bureau, notifying the Bureau that the agency--
 - (A) has no jurisdiction or authority with respect to the qualifying project;

- (B) has no expertise or information relevant to the qualifying project or any review, analysis, opinion, statement, permit, license, or other approval or decision associated therewith; or
 - (C) does not intend to submit comments on the qualifying project or conduct any review of such a project or make any decision with respect to such project in a manner other than in cooperation with the Bureau.
- (c) State Authority- A State in which a qualifying project is being considered may choose, consistent with State law--
- (1) to participate as a cooperating agency; and
 - (2) to make subject to the processes of this Act all State agencies that--
 - (A) have jurisdiction over the qualifying project;
 - (B) are required to conduct or issue a review, analysis, or opinion for the qualifying project; or
 - (C) are required to make a determination on issuing a permit, license, or approval for the water resource project.

(c) Bureau Responsibilities

- (a) In General- The principal responsibilities of the Bureau under this Act are to--
- (1) serve as the point of contact for applicants, State agencies, Indian tribes, and others regarding proposed projects;
 - (2) coordinate preparation of unified environmental documentation that will serve as the basis for all Federal decisions necessary to authorize the use of Federal lands for qualifying projects; and
 - (3) coordinate all Federal agency reviews necessary for project development and construction of qualifying projects.
- (b) Coordination Process- The Bureau shall have the following coordination responsibilities:
- (1) PRE-APPLICATION COORDINATION- Notify cooperating agencies of proposed qualifying projects not later than 30 days after receipt of a proposal and facilitate a preapplication meeting for prospective applicants, relevant Federal and State agencies, and Indian tribes to--
 - (A) explain applicable processes, data requirements, and applicant submissions necessary to complete the required Federal agency reviews within the time frame established; and
 - (B) establish the schedule for the qualifying project.
 - (2) CONSULTATION WITH COOPERATING AGENCIES- Consult with the cooperating agencies throughout the Federal agency review process, identify and obtain relevant data in a timely manner, and set necessary deadlines for cooperating agencies.
 - (3) SCHEDULE- Work with the qualifying project applicant and cooperating agencies to establish a project schedule. In establishing the schedule, the Bureau shall consider, among other factors--
 - (A) the responsibilities of cooperating agencies under applicable laws and regulations;

- (B) the resources available to the cooperating agencies and the non-Federal qualifying project sponsor, as applicable;
 - (C) the overall size and complexity of the qualifying project;
 - (D) the overall schedule for and cost of the qualifying project; and
 - (E) the sensitivity of the natural and historic resources that may be affected by the qualifying project.
- (4) ENVIRONMENTAL COMPLIANCE- Prepare a unified environmental review document for each qualifying project application, incorporating a single environmental record on which all cooperating agencies with authority to issue approvals for a given qualifying project shall base project approval decisions. Help ensure that cooperating agencies make necessary decisions, within their respective authorities, regarding Federal approvals in accordance with the following timelines:
- (A) Not later than one year after acceptance of a completed project application when an environmental assessment and finding of no significant impact is determined to be the appropriate level of review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
 - (B) Not later than one year and 30 days after the close of the public comment period for a draft environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), when an environmental impact statement is required under the same.
- (5) CONSOLIDATED ADMINISTRATIVE RECORD- Maintain a consolidated administrative record of the information assembled and used by the cooperating agencies as the basis for agency decisions.
- (6) PROJECT DATA RECORDS- To the extent practicable and consistent with Federal law, ensure that all project data is submitted and maintained in generally accessible electronic format, compile, and where authorized under existing law, make available such project data to cooperating agencies, the qualifying project applicant, and to the public.
- (7) PROJECT MANAGER- Appoint a project manager for each qualifying project. The project manager shall have authority to oversee the project and to facilitate the issuance of the relevant final authorizing documents, and shall be responsible for ensuring fulfillment of all Bureau responsibilities set forth in this section and all cooperating agency responsibilities under section 5.

(d) Cooperating Agency Responsibilities.

- (a) Adherence to Bureau Schedule- Upon notification of an application for a qualifying project, all cooperating agencies shall submit to the Bureau a timeframe under which the cooperating agency reasonably considers it will be able to complete its authorizing responsibilities. The Bureau shall use the timeframe submitted under this subsection to establish the project schedule under section 4, and the cooperating agencies shall adhere to the project schedule established by the Bureau.
- (b) Environmental Record- Cooperating agencies shall submit to the Bureau all environmental review material produced or compiled in the course of carrying out

activities required under Federal law consistent with the project schedule established by the Bureau.

(c) Data Submission- To the extent practicable and consistent with Federal law, the cooperating agencies shall submit all relevant project data to the Bureau in a generally accessible electronic format subject to the project schedule set forth by the Bureau.

(e) Funding to Process Permits.

(a) In General- The Secretary, after public notice in accordance with the Administrative Procedures Act (5 U.S.C. 553), may accept and expend funds contributed by a non-Federal public entity to expedite the evaluation of a permit of that entity related to a qualifying project or activity for a public purpose under the jurisdiction of the Department of the Interior.

(b) Effect on Permitting-

(1) IN GENERAL- In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decisionmaking with respect to permits, either substantively or procedurally.

(2) EVALUATION OF PERMITS- In carrying out this section, the Secretary shall ensure that the evaluation of permits carried out using funds accepted under this section shall--

(A) be reviewed by the Regional Director of the Bureau of Reclamation, or the Regional Director's designee, of the region in which the qualifying project or activity is located; and

(B) use the same procedures for decisions that would otherwise be required for the evaluation of permits for similar projects or activities not carried out using funds authorized under this section.

(3) IMPARTIAL DECISIONMAKING- In carrying out this section, the Secretary and the cooperating agencies receiving funds under this section for qualifying projects shall ensure that the use of the funds accepted under this section for such projects shall not--

(A) impact impartial decisionmaking with respect to the issuance of permits, either substantively or procedurally; or

(B) diminish, modify, or otherwise affect the statutory or regulatory authorities of such agencies.

(c) Limitation on Use of Funds- None of the funds accepted under this section shall be used to carry out a review of the evaluation of permits required under subsection (b)(2)(A).

(d) Public Availability- The Secretary shall ensure that all final permit decisions carried out using funds authorized under this section are made available to the public, including on the Internet.

Sec. 702. PREPAYMENT OF CERTAIN REPAYMENT CONTRACTS

(a) Conversion and Prepayment of Contracts-

(1) CONVERSION- Upon request of the contractor, the Secretary of the Interior shall convert any water service contract in effect on the date of enactment of this Act and between the United States and a water users' association to allow for prepayment of the repayment contract pursuant to paragraph (2) under mutually agreeable terms and conditions. The manner of conversion under this paragraph shall be as follows:

(A) Water service contracts that were entered into under section 9(e) of the Act of August 4, 1939 (53 Stat. 1196), to be converted under this section shall be converted to repayment contracts under section 9(d) of that Act (53 Stat. 1195).

(B) Water service contracts that were entered under subsection (c)(2) of section 9 of the Act of August 4, 1939 (53 Stat. 1194), to be converted under this section shall be converted to a contract under subsection (c)(1) of section 9 of that Act (53 Stat. 1195).

(2) PREPAYMENT- All contracts converted pursuant to paragraph (1)(A) shall--

(A) upon request of the contractor, provide for the repayment, either in lump sum or by accelerated prepayment, of the remaining construction costs identified in water project specific irrigation rate repayment schedules, as adjusted to reflect payment not reflected in such schedule, and properly assignable for ultimate return by the contractor, or if made in approximately equal installments, no later than 3 years after the effective date of the repayment contract; such amount to be discounted by 1/2 the Treasury rate. An estimate of the remaining construction costs, as adjusted, shall be provided by the Secretary to the contractor no later than 90 days following receipt of request of the contractor;

(B) require that construction costs or other capitalized costs incurred after the effective date of the contract or not reflected in the rate schedule referenced in subparagraph (A), and properly assignable to such contractor shall be repaid in not more than 5 years after notification of the allocation if such amount is a result of a collective annual allocation of capital costs to the contractors exercising contract conversion under this subsection of less than \$5,000,000. If such amount is \$5,000,000 or greater, such cost shall be repaid as provided by applicable reclamation law;

(C) provide that power revenues will not be available to aid in repayment of construction costs allocated to irrigation under the contract; and

(D) continue so long as the contractor pays applicable charges, consistent with section 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195), and applicable law.

(3) CONTRACT REQUIREMENTS- The following shall apply with regard to all contracts converted pursuant to paragraph (1)(B) and any other repayment contracts:

- (A) Upon request of the contractor, provide for the repayment in lump sum of the remaining net present value of construction costs identified in water project specific municipal and industrial rate repayment schedules, as adjusted to reflect payments not reflected in such schedule, and properly assignable for ultimate return by the contractor. An estimate of the remaining construction costs, as adjusted, shall be provided by the Secretary to the contractor no later than 90 days after receipt of request of contractor.
- (B) The contract shall require that construction costs or other capitalized costs incurred after the effective date of the contract or not reflected in the rate schedule referenced in subparagraph (A), and properly assignable to such contractor, shall be repaid in not more than 5 years after notification of the allocation if such amount is a result of a collective annual allocation of capital costs to the contractors exercising contract conversation under this subsection of less than \$5,000,000. If such amount is \$5,000,000 or greater, such cost shall be repaid as provided by applicable reclamation law; and
- (C) Continue so long as the contractor pays applicable charges, consistent with section 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195), and applicable law.
- (4) CONDITIONS- All contracts entered into pursuant to paragraphs (1), (2), and (3) shall--
- (A) not be adjusted on the basis of the type of prepayment financing used by the water users' association;
- (B) conform to any other agreements, such as applicable settlement agreements and new constructed appurtenant facilities; and
- (C) not modify other water service, repayment, exchange and transfer contractual rights between the water users' association, and the Bureau of Reclamation, or any rights, obligations, or relationships of the water users' association and their landowners as provided under State law.
- (b) Accounting- The amounts paid pursuant to subsection (a) shall be subject to adjustment following a final cost allocation by the Secretary of the Interior. In the event that the final cost allocation indicates that the costs properly assignable to the contractor are greater than what has been paid by the contractor, the contractor shall be obligated to pay the remaining allocated costs. The term of such additional repayment contract shall be not less than one year and not more than 10 years, however, mutually agreeable provisions regarding the rate of repayment of such amount may be developed by the parties. In the event that the final cost allocation indicates that the costs properly assignable to the contractor are less than what the contractor has paid, the Secretary shall credit such overpayment as an offset against any outstanding or future obligation of the contractor.
- (c) Applicability of Certain Provisions-
- (1) EFFECT OF EXISTING LAW- Upon a contractor's compliance with and discharge of the obligation of repayment of the construction costs pursuant to a contract entered into pursuant to subsection (a)(2)(A), sections 213 (a) and (b)

of the Reclamation Reform Act of 1982 (96 Stat. 1269) shall apply to affected lands.

(2) EFFECT OF OTHER OBLIGATIONS- The obligation of a contractor to repay construction costs or other capitalized costs described in subsections (a)(2)(B), (a)(3)(B) or (b) shall not affect a contractor's status as having repaid all of the construction costs assignable to the contractor or the applicability of sections 213 (a) and (b) of the Reclamation Reform Act of 1982 (96 Stat. 1269) once the amount required to be paid by the contractor under the repayment contract entered into pursuant to subsection (a)(2)(A) have been paid.

(d) Effect on Existing Law Not Altered- Implementation of the provisions of this Act shall not alter the repayment obligation of any water service or repayment contractor receiving water from the same water project, or shift any costs that would otherwise have been properly assignable to the water users' association identified in subsections (a)(1), (a)(2), and (a)(3) absent this section, including operation and maintenance costs, construction costs, or other capitalized costs incurred after the date of the enactment of this Act, or to other contractors.

(e) Surface Water Storage Enhancement Program-

(1) IN GENERAL- Three years following the date of enactment of this Act, all receipts generated from prepayment of contracts under this section beyond amounts necessary to cover the amount of receipts forgone from scheduled payments under current law for the 10-year period following the date of enactment of this Act shall be directed to the Reclamation Surface Water Storage Account under paragraph (2).

(2) SURFACE STORAGE ACCOUNT- The Secretary shall allocate amounts collected under paragraph (1) into the 'Reclamation Surface Storage Account' to fund or provide loans for the construction of surface water storage. The Secretary may also enter into cooperative agreements with water users' associations for the construction of surface water storage and amounts within the Surface Storage Account may be used to fund such construction. Surface water storage projects that are otherwise not federally authorized shall not be considered Federal facilities as a result of any amounts allocated from the Surface Storage Account for part or all of such facilities.

(3) REPAYMENT- Amounts used for surface water storage construction from the Account shall be fully reimbursed to the Account consistent with the requirements under Federal reclamation law (the law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093))), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.) except that all funds reimbursed shall be deposited in the Account established under paragraph (1).

(4) AVAILABILITY OF AMOUNTS- Amounts deposited in the Account under this subsection shall--

(A) be made available in accordance with this section, without further appropriation; and

(B) be in addition to amounts appropriated for such purposes under any other provision of law.

(5) PURPOSES OF SURFACE WATER STORAGE- Construction of surface water storage under this section shall be made for the following purposes:

- (A) Increased municipal and industrial water supply.
- (B) Agricultural floodwater, erosion, and sedimentation reduction.
- (C) Agricultural drainage improvements.
- (D) Agricultural irrigation.
- (E) Increased recreation opportunities.
- (F) Reduced adverse impacts to fish and wildlife from water storage or diversion projects within watersheds associated with water storage projects funded under this section.
- (G) Any other purposes consistent with reclamation laws or other Federal law.

Sec. 703. Bureau of Reclamation Surface Water Storage Streamlining

(a) DEFINITIONS.

- (1) ENVIRONMENTAL IMPACT STATEMENT- The term `environmental impact statement' means the detailed statement of environmental impacts of a project required to be prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
- (2) ENVIRONMENTAL REVIEW PROCESS-
 - (A) IN GENERAL- The term `environmental review process' means the process of preparing an environmental impact statement, environmental assessment, categorical exclusion, or other document under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for a project study.
 - (B) INCLUSIONS- The term `environmental review process' includes the process for and completion of any environmental permit, approval, review, or study required for a project study under any Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
- (3) FEDERAL JURISDICTIONAL AGENCY- The term `Federal jurisdictional agency' means a Federal agency with jurisdiction delegated by law, regulation, order, or otherwise over a review, analysis, opinion, statement, permit, license, or other approval or decision required for a project study under applicable Federal laws (including regulations).
- (4) FEDERAL LEAD AGENCY- The term `Federal lead agency' means the Bureau of Reclamation.
- (5) PROJECT- The term `project' means a surface water project to be carried out or funded by the Secretary pursuant to the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).
- (6) PROJECT SPONSOR- The term `project sponsor' means a State, regional, or local authority or other qualifying entity, such as a water conservation district, irrigation district, water conservancy district, or rural water district or association.
- (7) PROJECT STUDY- The term `project study' means a feasibility study for a project carried out pursuant to the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).

- (8) SECRETARY- The term 'Secretary' means the Secretary of the Interior.
(9) SURFACE WATER STORAGE- The term 'surface water storage' means any surface water reservoir or impoundment that would be owned, funded, or operated by the Bureau of Reclamation.

(b) ACCELERATION OF STUDIES.

- (a) In General- To the extent practicable, a project study initiated by the Secretary, after the date of enactment of this Act, under the Reclamation Act of 1902 (32 Stat. 388), and all Acts amendatory thereof or supplementary thereto, shall--
(1) result in the completion of a final feasibility report not later than 3 years after the date of initiation;
(2) have a maximum Federal cost of \$3,000,000; and
(3) ensure that personnel from the local project area, region, and headquarters levels of the Bureau of Reclamation concurrently conduct the review required under that section.
- (b) Extension- If the Secretary determines that a project study described in subsection (a) will not be conducted in accordance with subsection (a), the Secretary, not later than 30 days after the date of making the determination, shall--
(1) prepare an updated project study schedule and cost estimate;
(2) notify the non-Federal project cost-sharing partner that the project study has been delayed; and
(3) provide written notice to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate as to the reasons the requirements of subsection (a) are not attainable.
- (c) Exception-
(1) IN GENERAL- Notwithstanding the requirements of subsection (a), the Secretary may extend the timeline of a project study by a period not to exceed 3 years, if the Secretary determines that the project study is too complex to comply with the requirements of subsection (a).
(2) FACTORS- In making a determination that a study is too complex to comply with the requirements of subsection (a), the Secretary shall consider--
(A) the type, size, location, scope, and overall cost of the project;
(B) whether the project will use any innovative design or construction techniques;
(C) whether the project will require significant action by other Federal, State, or local agencies;
(D) whether there is significant public dispute as to the nature or effects of the project; and
(E) whether there is significant public dispute as to the economic or environmental costs or benefits of the project.
- (3) NOTIFICATION- Each time the Secretary makes a determination under this subsection, the Secretary shall provide written notice to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate as to the results of that determination, including

an identification of the specific 1 or more factors used in making the determination that the project is complex.

(4) LIMITATION- The Secretary shall not extend the timeline for a project study for a period of more than 7 years, and any project study that is not completed before that date shall no longer be authorized.

(d) Reviews- Not later than 90 days after the date of the initiation of a project study described in subsection (a), the Secretary shall--

(1) take all steps necessary to initiate the process for completing federally mandated reviews that the Secretary is required to complete as part of the study, including the environmental review process under section 5;

(2) convene a meeting of all Federal, tribal, and State agencies identified under section 5(d) that may--

(A) have jurisdiction over the project;

(B) be required by law to conduct or issue a review, analysis, opinion, or statement for the project study; or

(C) be required to make a determination on issuing a permit, license, or other approval or decision for the project study; and

(3) take all steps necessary to provide information that will enable required reviews and analyses related to the project to be conducted by other agencies in a thorough and timely manner.

(e) Interim Report- Not later than 18 months after the date of enactment of this Act, the Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate and make publicly available a report that describes--

(1) the status of the implementation of the planning process under this section, including the number of participating projects;

(2) a review of project delivery schedules, including a description of any delays on those studies initiated prior to the date of the enactment of this Act; and

(3) any recommendations for additional authority necessary to support efforts to expedite the project.

(f) Final Report- Not later than 4 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate and make publicly available a report that describes--

(1) the status of the implementation of this section, including a description of each project study subject to the requirements of this section;

(2) the amount of time taken to complete each project study; and

(3) any recommendations for additional authority necessary to support efforts to expedite the project study process, including an analysis of whether the limitation established by subsection (a)(2) needs to be adjusted to address the impacts of inflation.

(c) EXPEDITED COMPLETION OF REPORTS.

The Secretary shall--

- (1) expedite the completion of any ongoing project study initiated before the date of enactment of this Act; and
- (2) if the Secretary determines that the project is justified in a completed report, proceed directly to preconstruction planning, engineering, and design of the project in accordance with the Reclamation Act of 1902 (32 Stat. 388), and all Acts amendatory thereof or supplementary thereto.

(d) PROJECT ACCELERATION.

(a) Applicability-

- (1) IN GENERAL- This section shall apply to each project study that is initiated after the date of enactment of this Act and for which an environmental impact statement is prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
- (2) FLEXIBILITY- Any authority granted under this section may be exercised, and any requirement established under this section may be satisfied, for the conduct of an environmental review process for a project study, a class of project studies, or a program of project studies.
- (3) LIST OF PROJECT STUDIES-
 - (A) IN GENERAL- The Secretary shall annually prepare, and make publicly available, a list of all project studies that the Secretary has determined--
 - (i) meets the standards described in paragraph (1); and
 - (ii) does not have adequate funding to make substantial progress toward the completion of the project study.
 - (B) INCLUSIONS- The Secretary shall include for each project study on the list under subparagraph (A) a description of the estimated amounts necessary to make substantial progress on the project study.

(b) Project Review Process-

- (1) IN GENERAL- The Secretary shall develop and implement a coordinated environmental review process for the development of project studies.
- (2) COORDINATED REVIEW- The coordinated environmental review process described in paragraph (1) shall require that any review, analysis, opinion, statement, permit, license, or other approval or decision issued or made by a Federal, State, or local governmental agency or an Indian tribe for a project study described in subsection (b) be conducted, to the maximum extent practicable, concurrently with any other applicable governmental agency or Indian tribe.
- (3) TIMING- The coordinated environmental review process under this subsection shall be completed not later than the date on which the Secretary, in consultation and concurrence with the agencies identified under section 5(d), establishes with respect to the project study.

(c) Lead Agencies-

- (1) JOINT LEAD AGENCIES-
 - (A) IN GENERAL- Subject to the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the requirements of section 1506.8 of title 40, Code of Federal Regulations (or

successor regulations), including the concurrence of the proposed joint lead agency, a project sponsor may serve as the joint lead agency.

(B) PROJECT SPONSOR AS JOINT LEAD AGENCY- A project sponsor that is a State or local governmental entity may--

(i) with the concurrence of the Secretary, serve as a joint lead agency with the Federal lead agency for purposes of preparing any environmental document under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(ii) prepare any environmental review process document under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) required in support of any action or approval by the Secretary if--

(I) the Secretary provides guidance in the preparation process and independently evaluates that document;

(II) the project sponsor complies with all requirements applicable to the Secretary under--

(aa) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(bb) any regulation implementing that Act; and

(cc) any other applicable Federal law; and

(III) the Secretary approves and adopts the document before the Secretary takes any subsequent action or makes any approval based on that document, regardless of whether the action or approval of the Secretary results in Federal funding.

(2) DUTIES- The Secretary shall ensure that--

(A) the project sponsor complies with all design and mitigation commitments made jointly by the Secretary and the project sponsor in any environmental document prepared by the project sponsor in accordance with this subsection; and

(B) any environmental document prepared by the project sponsor is appropriately supplemented to address any changes to the project the Secretary determines are necessary.

(3) ADOPTION AND USE OF DOCUMENTS- Any environmental document prepared in accordance with this subsection shall be adopted and used by any Federal agency making any determination related to the project study to the same extent that the Federal agency could adopt or use a document prepared by another Federal agency under--

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) parts 1500 through 1508 of title 40, Code of Federal Regulations (or successor regulations).

(4) ROLES AND RESPONSIBILITY OF LEAD AGENCY- With respect to the environmental review process for any project study, the Federal lead agency shall have authority and responsibility--

- (A) to take such actions as are necessary and proper and within the authority of the Federal lead agency to facilitate the expeditious resolution of the environmental review process for the project study; and
- (B) to prepare or ensure that any required environmental impact statement or other environmental review document for a project study required to be completed under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) is completed in accordance with this section and applicable Federal law.

(d) Participating and Cooperating Agencies-

(1) IDENTIFICATION OF JURISDICTIONAL AGENCIES- With respect to carrying out the environmental review process for a project study, the Secretary shall identify, as early as practicable in the environmental review process, all Federal, State, and local government agencies and Indian tribes that may--

- (A) have jurisdiction over the project;
- (B) be required by law to conduct or issue a review, analysis, opinion, or statement for the project study; or
- (C) be required to make a determination on issuing a permit, license, or other approval or decision for the project study.

(2) STATE AUTHORITY- If the environmental review process is being implemented by the Secretary for a project study within the boundaries of a State, the State, consistent with State law, may choose to participate in the process and to make subject to the process all State agencies that--

- (A) have jurisdiction over the project;
- (B) are required to conduct or issue a review, analysis, opinion, or statement for the project study; or
- (C) are required to make a determination on issuing a permit, license, or other approval or decision for the project study.

(3) INVITATION-

- (A) IN GENERAL- The Federal lead agency shall invite, as early as practicable in the environmental review process, any agency identified under paragraph (1) to become a participating or cooperating agency, as applicable, in the environmental review process for the project study.
- (B) DEADLINE- An invitation to participate issued under subparagraph (A) shall set a deadline by which a response to the invitation shall be submitted, which may be extended by the Federal lead agency for good cause.

(4) PROCEDURES- Section 1501.6 of title 40, Code of Federal Regulations (as in effect on the date of enactment of the Bureau of Reclamation Surface Water Storage Streamlining Act) shall govern the identification and the participation of a cooperating agency.

(5) FEDERAL COOPERATING AGENCIES- Any Federal agency that is invited by the Federal lead agency to participate in the environmental review process for a project study shall be designated as a cooperating agency by the Federal lead

agency unless the invited agency informs the Federal lead agency, in writing, by the deadline specified in the invitation that the invited agency--

- (A)(i) has no jurisdiction or authority with respect to the project;
 - (ii) has no expertise or information relevant to the project; or
 - (iii) does not have adequate funds to participate in the project; and
- (B) does not intend to submit comments on the project.

(6) ADMINISTRATION- A participating or cooperating agency shall comply with this section and any schedule established under this section.

(7) EFFECT OF DESIGNATION- Designation as a participating or cooperating agency under this subsection shall not imply that the participating or cooperating agency--

- (A) supports a proposed project; or
- (B) has any jurisdiction over, or special expertise with respect to evaluation of, the project.

(8) CONCURRENT REVIEWS- Each participating or cooperating agency shall--

- (A) carry out the obligations of that agency under other applicable law concurrently and in conjunction with the required environmental review process, unless doing so would prevent the participating or cooperating agency from conducting needed analysis or otherwise carrying out those obligations; and
- (B) formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of the environmental review process in a timely, coordinated, and environmentally responsible manner.

(e) Programmatic Compliance-

(1) IN GENERAL- The Secretary shall issue guidance regarding the use of programmatic approaches to carry out the environmental review process that--

- (A) eliminates repetitive discussions of the same issues;
- (B) focuses on the actual issues ripe for analyses at each level of review;
- (C) establishes a formal process for coordinating with participating and cooperating agencies, including the creation of a list of all data that are needed to carry out an environmental review process; and
- (D) complies with--
 - (i) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and
 - (ii) all other applicable laws.

(2) REQUIREMENTS- In carrying out paragraph (1), the Secretary shall--

- (A) as the first step in drafting guidance under that paragraph, consult with relevant Federal, State, and local governmental agencies, Indian tribes, and the public on the appropriate use and scope of the programmatic approaches;
- (B) emphasize the importance of collaboration among relevant Federal, State, and local governmental agencies, and Indian tribes in undertaking programmatic reviews, especially with respect to including reviews with a broad geographical scope;
- (C) ensure that the programmatic reviews--

- (i) promote transparency, including of the analyses and data used in the environmental review process, the treatment of any deferred issues raised by Federal, State, and local governmental agencies, Indian tribes, or the public, and the temporal and special scales to be used to analyze those issues;
 - (ii) use accurate and timely information in the environmental review process, including--
 - (I) criteria for determining the general duration of the usefulness of the review; and
 - (II) the timeline for updating any out-of-date review;
 - (iii) describe--
 - (I) the relationship between programmatic analysis and future tiered analysis; and
 - (II) the role of the public in the creation of future tiered analysis; and
 - (iv) are available to other relevant Federal, State, and local governmental agencies, Indian tribes, and the public;
- (D) allow not fewer than 60 days of public notice and comment on any proposed guidance; and
- (E) address any comments received under subparagraph (D).
- (f) Coordinated Reviews-
- (1) COORDINATION PLAN-
- (A) ESTABLISHMENT- The Federal lead agency shall, after consultation with and the concurrence of each participating and cooperating agency and the project sponsor or joint lead agency, as applicable, establish a plan for coordinating public and agency participation in, and comment on, the environmental review process for a project study or a category of project studies.
- (B) SCHEDULE-
- (i) IN GENERAL- As soon as practicable but not later than 45 days after the close of the public comment period on a draft environmental impact statement, the Federal lead agency, after consultation with and the concurrence of each participating and cooperating agency and the project sponsor or joint lead agency, as applicable, shall establish, as part of the coordination plan established in subparagraph (A), a schedule for completion of the environmental review process for the project study.
- (ii) FACTORS FOR CONSIDERATION- In establishing a schedule, the Secretary shall consider factors such as--
 - (I) the responsibilities of participating and cooperating agencies under applicable laws;
 - (II) the resources available to the project sponsor, joint lead agency, and other relevant Federal and State agencies, as applicable;
 - (III) the overall size and complexity of the project;
 - (IV) the overall schedule for and cost of the project; and

(V) the sensitivity of the natural and historical resources that could be affected by the project.

(iii) MODIFICATIONS- The Secretary may--

(I) lengthen a schedule established under clause (i) for good cause; and

(II) shorten a schedule only with concurrence of the affected participating and cooperating agencies and the project sponsor or joint lead agency, as applicable.

(iv) DISSEMINATION- A copy of a schedule established under clause (i) shall be--

(I) provided to each participating and cooperating agency and the project sponsor or joint lead agency, as applicable; and

(II) made available to the public.

(2) COMMENT DEADLINES- The Federal lead agency shall establish the following deadlines for comment during the environmental review process for a project study:

(A) DRAFT ENVIRONMENTAL IMPACT STATEMENTS- For comments by Federal and States agencies and the public on a draft environmental impact statement, a period of not more than 60 days after publication in the Federal Register of notice of the date of public availability of the draft environmental impact statement, unless--

(i) a different deadline is established by agreement of the Federal lead agency, the project sponsor or joint lead agency, as applicable, and all participating and cooperating agencies; or

(ii) the deadline is extended by the Federal lead agency for good cause.

(B) OTHER ENVIRONMENTAL REVIEW PROCESSES- For all other comment periods established by the Federal lead agency for agency or public comments in the environmental review process, a period of not more than 30 days after the date on which the materials on which comment is requested are made available, unless--

(i) a different deadline is established by agreement of the Federal lead agency, the project sponsor, or joint lead agency, as applicable, and all participating and cooperating agencies; or

(ii) the deadline is extended by the Federal lead agency for good cause.

(3) DEADLINES FOR DECISIONS UNDER OTHER LAWS- In any case in which a decision under any Federal law relating to a project study, including the issuance or denial of a permit or license, is required to be made by the date described in subsection (h)(5)(B), the Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate--

(A) as soon as practicable after the 180-day period described in subsection (h)(5)(B), an initial notice of the failure of the Federal agency to make the decision; and

(B) every 60 days thereafter until such date as all decisions of the Federal agency relating to the project study have been made by the Federal agency, an additional notice that describes the number of decisions of the Federal agency that remain outstanding as of the date of the additional notice.

(4) INVOLVEMENT OF THE PUBLIC- Nothing in this subsection reduces any time period provided for public comment in the environmental review process under applicable Federal law (including regulations).

(5) TRANSPARENCY REPORTING-

(A) REPORTING REQUIREMENTS- Not later than 1 year after the date of enactment of this Act, the Secretary shall establish and maintain an electronic database and, in coordination with other Federal and State agencies, issue reporting requirements to make publicly available the status and progress with respect to compliance with applicable requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and any other Federal, State, or local approval or action required for a project study for which this section is applicable.

(B) PROJECT STUDY TRANSPARENCY- Consistent with the requirements established under subparagraph (A), the Secretary shall make publicly available the status and progress of any Federal, State, or local decision, action, or approval required under applicable laws for each project study for which this section is applicable.

(g) Issue Identification and Resolution-

(1) COOPERATION- The Federal lead agency, the cooperating agencies, and any participating agencies shall work cooperatively in accordance with this section to identify and resolve issues that could delay completion of the environmental review process or result in the denial of any approval required for the project study under applicable laws.

(2) FEDERAL LEAD AGENCY RESPONSIBILITIES-

(A) IN GENERAL- The Federal lead agency shall make information available to the cooperating agencies and participating agencies as early as practicable in the environmental review process regarding the environmental and socioeconomic resources located within the project area and the general locations of the alternatives under consideration.

(B) DATA SOURCES- The information under subparagraph (A) may be based on existing data sources, including geographic information systems mapping.

(3) COOPERATING AND PARTICIPATING AGENCY RESPONSIBILITIES- Based on information received from the Federal lead agency, cooperating and participating agencies shall identify, as early as practicable, any issues of concern regarding the potential environmental or socioeconomic impacts of the project, including any issues that could substantially delay or prevent an agency from granting a permit or other approval that is needed for the project study.

(4) ACCELERATED ISSUE RESOLUTION AND ELEVATION-

(A) IN GENERAL- On the request of a participating or cooperating agency or project sponsor, the Secretary shall convene an issue resolution

meeting with the relevant participating and cooperating agencies and the project sponsor or joint lead agency, as applicable, to resolve issues that may--

- (i) delay completion of the environmental review process; or
- (ii) result in denial of any approval required for the project study under applicable laws.

(B) MEETING DATE- A meeting requested under this paragraph shall be held not later than 21 days after the date on which the Secretary receives the request for the meeting, unless the Secretary determines that there is good cause to extend that deadline.

(C) NOTIFICATION- On receipt of a request for a meeting under this paragraph, the Secretary shall notify all relevant participating and cooperating agencies of the request, including the issue to be resolved and the date for the meeting.

(D) ELEVATION OF ISSUE RESOLUTION- If a resolution cannot be achieved within the 30-day period beginning on the date of a meeting under this paragraph and a determination is made by the Secretary that all information necessary to resolve the issue has been obtained, the Secretary shall forward the dispute to the heads of the relevant agencies for resolution.

(E) CONVENTION BY SECRETARY- The Secretary may convene an issue resolution meeting under this paragraph at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under subparagraph (A).

(5) FINANCIAL PENALTY PROVISIONS-

(A) IN GENERAL- A Federal jurisdictional agency shall complete any required approval or decision for the environmental review process on an expeditious basis using the shortest existing applicable process.

(B) FAILURE TO DECIDE-

(i) IN GENERAL-

(I) TRANSFER OF FUNDS- If a Federal jurisdictional agency fails to render a decision required under any Federal law relating to a project study that requires the preparation of an environmental impact statement or environmental assessment, including the issuance or denial of a permit, license, statement, opinion, or other approval by the date described in clause (ii), the amount of funds made available to support the office of the head of the Federal jurisdictional agency shall be reduced by an amount of funding equal to the amount specified in item (aa) or (bb) of subclause (II), and those funds shall be made available to the division of the Federal jurisdictional agency charged with rendering the decision by not later than 1 day after the applicable date under clause (ii), and once each week thereafter until a final decision is rendered, subject to subparagraph (C).

(II) AMOUNT TO BE TRANSFERRED- The amount referred to in subclause (I) is--

(aa) \$20,000 for any project study requiring the preparation of an environmental assessment or environmental impact statement; or

(bb) \$10,000 for any project study requiring any type of review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) other than an environmental assessment or environmental impact statement.

(ii) DESCRIPTION OF DATE- The date referred to in clause (i) is the later of--

(I) the date that is 180 days after the date on which an application for the permit, license, or approval is complete; and

(II) the date that is 180 days after the date on which the Federal lead agency issues a decision on the project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(C) LIMITATIONS-

(i) IN GENERAL- No transfer of funds under subparagraph (B) relating to an individual project study shall exceed, in any fiscal year, an amount equal to 1 percent of the funds made available for the applicable agency office.

(ii) FAILURE TO DECIDE- The total amount transferred in a fiscal year as a result of a failure by an agency to make a decision by an applicable deadline shall not exceed an amount equal to 5 percent of the funds made available for the applicable agency office for that fiscal year.

(iii) AGGREGATE- Notwithstanding any other provision of law, for each fiscal year, the aggregate amount of financial penalties assessed against each applicable agency office under this Act and any other Federal law as a result of a failure of the agency to make a decision by an applicable deadline for environmental review, including the total amount transferred under this paragraph, shall not exceed an amount equal to 9.5 percent of the funds made available for the agency office for that fiscal year.

(D) NO FAULT OF AGENCY-

(i) IN GENERAL- A transfer of funds under this paragraph shall not be made if the applicable agency described in subparagraph (A) notifies, with a supporting explanation, the Federal lead agency, cooperating agencies, and project sponsor, as applicable, that--

(I) the agency has not received necessary information or approvals from another entity in a manner that affects the

ability of the agency to meet any requirements under Federal, State, or local law;

(II) significant new information, including from public comments, or circumstances, including a major modification to an aspect of the project, requires additional analysis for the agency to make a decision on the project application; or

(III) the agency lacks the financial resources to complete the review under the scheduled timeframe, including a description of the number of full-time employees required to complete the review, the amount of funding required to complete the review, and a justification as to why not enough funding is available to complete the review by the deadline.

(ii) LACK OF FINANCIAL RESOURCES- If the agency provides notice under clause (i)(III), the Inspector General of the agency shall--

(I) conduct a financial audit to review the notice; and

(II) not later than 90 days after the date on which the review described in subclause (I) is completed, submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report on the notice.

(E) LIMITATION- The Federal agency from which funds are transferred pursuant to this paragraph shall not reprogram funds to the office of the head of the agency, or equivalent office, to reimburse that office for the loss of the funds.

(F) EFFECT OF PARAGRAPH- Nothing in this paragraph affects or limits the application of, or obligation to comply with, any Federal, State, local, or tribal law.

(h) Memorandum of Agreements for Early Coordination-

(1) SENSE OF CONGRESS- It is the sense of Congress that--

(A) the Secretary and other Federal agencies with relevant jurisdiction in the environmental review process should cooperate with each other, State and local agencies, and Indian tribes on environmental review and Bureau of Reclamation project delivery activities at the earliest practicable time to avoid delays and duplication of effort later in the process, prevent potential conflicts, and ensure that planning and project development decisions reflect environmental values; and

(B) the cooperation referred to in subparagraph (A) should include the development of policies and the designation of staff that advise planning agencies and project sponsors of studies or other information foreseeably required for later Federal action and early consultation with appropriate State and local agencies and Indian tribes.

(2) TECHNICAL ASSISTANCE- If requested at any time by a State or project sponsor, the Secretary and other Federal agencies with relevant jurisdiction in the

environmental review process, shall, to the maximum extent practicable and appropriate, as determined by the agencies, provide technical assistance to the State or project sponsor in carrying out early coordination activities.

(3) MEMORANDUM OF AGENCY AGREEMENT- If requested at any time by a State or project sponsor, the Federal lead agency, in consultation with other Federal agencies with relevant jurisdiction in the environmental review process, may establish memoranda of agreement with the project sponsor, Indian tribes, State and local governments, and other appropriate entities to carry out the early coordination activities, including providing technical assistance in identifying potential impacts and mitigation issues in an integrated fashion.

(i) Limitations- Nothing in this section preempts or interferes with--

- (1) any obligation to comply with the provisions of any Federal law, including--
 - (A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and
 - (B) any other Federal environmental law;
- (2) the reviewability of any final Federal agency action in a court of the United States or in the court of any State;
- (3) any requirement for seeking, considering, or responding to public comment; or
- (4) any power, jurisdiction, responsibility, duty, or authority that a Federal, State, or local governmental agency, Indian tribe, or project sponsor has with respect to carrying out a project or any other provision of law applicable to projects.

(j) Timing of Claims-

(1) TIMING-

- (A) IN GENERAL- Notwithstanding any other provision of law, a claim arising under Federal law seeking judicial review of a permit, license, or other approval issued by a Federal agency for a project study shall be barred unless the claim is filed not later than 3 years after publication of a notice in the Federal Register announcing that the permit, license, or other approval is final pursuant to the law under which the agency action is taken, unless a shorter time is specified in the Federal law that allows judicial review.
- (B) APPLICABILITY- Nothing in this subsection creates a right to judicial review or places any limit on filing a claim that a person has violated the terms of a permit, license, or other approval.

(2) NEW INFORMATION-

- (A) IN GENERAL- The Secretary shall consider new information received after the close of a comment period if the information satisfies the requirements for a supplemental environmental impact statement under title 40, Code of Federal Regulations (including successor regulations).
- (B) SEPARATE ACTION- The preparation of a supplemental environmental impact statement or other environmental document, if required under this section, shall be considered a separate final agency action and the deadline for filing a claim for judicial review of the action shall be 3 years after the date of publication of a notice in the Federal Register announcing the action relating to such supplemental environmental impact statement or other environmental document.

(k) Categorical Exclusions-

(1) IN GENERAL- Not later than 180 days after the date of enactment of this Act, the Secretary shall--

(A) survey the use by the Bureau of Reclamation of categorical exclusions in projects since 2005;

(B) publish a review of the survey that includes a description of--

(i) the types of actions that were categorically excluded or could be the basis for developing a new categorical exclusion; and

(ii) any requests previously received by the Secretary for new categorical exclusions; and

(C) solicit requests from other Federal agencies and project sponsors for new categorical exclusions.

(2) NEW CATEGORICAL EXCLUSIONS- Not later than 1 year after the date of enactment of this Act, if the Secretary has identified a category of activities that merit establishing a categorical exclusion that did not exist on the day before the date of enactment this Act based on the review under paragraph (1), the Secretary shall publish a notice of proposed rulemaking to propose that new categorical exclusion, to the extent that the categorical exclusion meets the criteria for a categorical exclusion under section 1508.4 of title 40, Code of Federal Regulations (or successor regulation).

(l) Review of Project Acceleration Reforms-

(1) IN GENERAL- The Comptroller General of the United States shall--

(A) assess the reforms carried out under this section; and

(B) not later than 5 years and not later than 10 years after the date of enactment of this Act, submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report that describes the results of the assessment.

(2) CONTENTS- The reports under paragraph (1) shall include an evaluation of impacts of the reforms carried out under this section on--

(A) project delivery;

(B) compliance with environmental laws; and

(C) the environmental impact of projects.

(m) Performance Measurement- The Secretary shall establish a program to measure and report on progress made toward improving and expediting the planning and environmental review process.

(n) Categorical Exclusions in Emergencies- For the repair, reconstruction, or rehabilitation of a Bureau of Reclamation surface water storage project that is in operation or under construction when damaged by an event or incident that results in a declaration by the President of a major disaster or emergency pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), the Secretary shall treat such repair, reconstruction, or rehabilitation activity as a class of action categorically excluded from the requirements relating to environmental assessments or environmental impact statements under section 1508.4 of title 40, Code of Federal Regulations (or successor regulations), if the repair or reconstruction activity is--

- (1) in the same location with the same capacity, dimensions, and design as the original Bureau of Reclamation surface water storage project as before the declaration described in this section; and
- (2) commenced within a 2-year period beginning on the date of a declaration described in this subsection.

(e) ANNUAL REPORT TO CONGRESS.

(a) In General- Not later than February 1 of each year, the Secretary shall develop and submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate an annual report, to be entitled 'Report to Congress on Future Surface Water Storage Development', that identifies the following:

- (1) PROJECT REPORTS- Each project report that meets the criteria established in subsection (c)(1)(A).
- (2) PROPOSED PROJECT STUDIES- Any proposed project study submitted to the Secretary by a non-Federal interest pursuant to subsection (b) that meets the criteria established in subsection (c)(1)(A).
- (3) PROPOSED MODIFICATIONS- Any proposed modification to an authorized surface water storage project or project study that meets the criteria established in subsection (c)(1)(A) that--
 - (A) is submitted to the Secretary by a non-Federal interest pursuant to subsection (b); or
 - (B) is identified by the Secretary for authorization.

(b) Requests for Proposals-

- (1) PUBLICATION- Not later than May 1 of each year, the Secretary shall publish in the Federal Register a notice requesting proposals from non-Federal interests for proposed project studies and proposed modifications to authorized surface water storage projects and project studies to be included in the annual report.
- (2) DEADLINE FOR REQUESTS- The Secretary shall include in each notice required by this subsection a requirement that non-Federal interests submit to the Secretary any proposals described in paragraph (1) by not later than 120 days after the date of publication of the notice in the Federal Register in order for the proposals to be considered for inclusion in the annual report.
- (3) NOTIFICATION- On the date of publication of each notice required by this subsection, the Secretary shall--
 - (A) make the notice publicly available, including on the Internet; and
 - (B) provide written notification of the publication to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(c) Contents-

- (1) PROJECT REPORTS, PROPOSED PROJECT STUDIES, AND PROPOSED MODIFICATIONS-
 - (A) CRITERIA FOR INCLUSION IN REPORT- The Secretary shall include in the annual report only those project reports, proposed project

studies, and proposed modifications to authorized surface water storage projects and project studies that--

- (i) are related to the missions and authorities of the Bureau of Reclamation;
- (ii) require specific congressional authorization, including by an Act of Congress;
- (iii) have not been congressionally authorized;
- (iv) have not been included in any previous annual report; and
- (v) if authorized, could be carried out by the Bureau of Reclamation.

(B) DESCRIPTION OF BENEFITS-

- (i) DESCRIPTION- The Secretary shall describe in the annual report, to the extent applicable and practicable, for each proposed project study and proposed modification to an authorized water resources development project or project study included in the annual report, the benefits, as described in clause (ii), of each such study or proposed modification.
- (ii) BENEFITS- The benefits (or expected benefits, in the case of a proposed project study) described in this clause are benefits to--
 - (I) the protection of human life and property;
 - (II) improvement to domestic irrigated water and power supplies;
 - (III) the national economy;
 - (IV) the environment; or
 - (V) the national security interests of the United States.

(C) IDENTIFICATION OF OTHER FACTORS- The Secretary shall identify in the annual report, to the extent practicable--

- (i) for each proposed project study included in the annual report, the non-Federal interest that submitted the proposed project study pursuant to subsection (b); and
- (ii) for each proposed project study and proposed modification to a surface water storage project or project study included in the annual report, whether the non-Federal interest has demonstrated--
 - (I) that local support exists for the proposed project study or proposed modification to an authorized surface water storage project or project study (including the surface water storage development project that is the subject of the proposed feasibility study or the proposed modification to an authorized project study); and
 - (II) the financial ability to provide the required non-Federal cost share.

(2) TRANSPARENCY- The Secretary shall include in the annual report, for each project report, proposed project study, and proposed modification to a surface water storage project or project study included under paragraph (1)(A)--

(A) the name of the associated non-Federal interest, including the name of any non-Federal interest that has contributed, or is expected to contribute, a non-Federal share of the cost of--

- (i) the project report;
- (ii) the proposed project study;
- (iii) the authorized project study for which the modification is proposed; or
- (iv) construction of--

(I) the surface water storage project that is the subject of--

(aa) the water report;

(bb) the proposed project study; or

(cc) the authorized project study for which a modification is proposed; or

(II) the proposed modification to a surface water storage development project;

(B) a letter or statement of support for the water report, proposed project study, or proposed modification to an authorized surface water storage development project or project study from each associated non-Federal interest;

(C) the purpose of the feasibility report, proposed feasibility study, or proposed modification to an authorized surface water storage project or project study;

(D) an estimate, to the extent practicable, of the Federal, non-Federal, and total costs of--

- (i) the proposed modification to an authorized project study; and
- (ii) construction of--

(I) the surface water storage development project that is the subject of--

(aa) the project report; or

(bb) the authorized project study for which a modification is proposed, with respect to the change in costs resulting from such modification; or

(II) the proposed modification to an authorized surface water storage development project; and

(E) an estimate, to the extent practicable, of the monetary and nonmonetary benefits of--

- (i) the surface water storage development project that is the subject of--

(I) the project report; or

- (II) the authorized project study for which a modification is proposed, with respect to the benefits of such modification; or
- (ii) the proposed modification to an authorized surface water storage development project.
- (3) CERTIFICATION- The Secretary shall include in the annual report a certification stating that each feasibility report, proposed feasibility study, and proposed modification to a surface water storage project or project study included in the annual report meets the criteria established in paragraph (1)(A).
- (4) APPENDIX- The Secretary shall include in the annual report an appendix listing the proposals submitted under subsection (b) that were not included in the annual report under paragraph (1)(A) and a description of why the Secretary determined that those proposals did not meet the criteria for inclusion under such paragraph.
- (d) Special Rule for Initial Annual Report- Notwithstanding any other deadlines required by this section, the Secretary shall--
- (1) not later than 60 days after the date of enactment of this Act, publish in the Federal Register a notice required by subsection (b)(1); and
- (2) include in such notice a requirement that non-Federal interests submit to the Secretary any proposals described in subsection (b)(1) by not later than 120 days after the date of publication of such notice in the Federal Register in order for such proposals to be considered for inclusion in the first annual report developed by the Secretary under this section.
- (e) Publication- Upon submission of an annual report to Congress, the Secretary shall make the annual report publicly available, including through publication on the Internet.
- (f) Definition- In this section the term `project report' means a final feasibility report developed under the Reclamation Act of 1902 (32 Stat. 388), and all Acts amendatory thereof or supplementary thereto.

Sec. 704. Environmental Procedures Streamlining

- (a) ESTABLISHMENT.—
- (1) IN GENERAL.—The Secretary shall carry out a water infrastructure project delivery program (referred to in this section as the “program”).
- (2) ASSUMPTION OF RESPONSIBILITY.—
- (A) IN GENERAL.—Subject to the other provisions of this section, with the written agreement of the Secretary and a State, which may be in the form of a memorandum of understanding, the Secretary may assign, and the State may assume, the responsibilities of the Secretary with respect to one or more eligible water infrastructure projects described in subparagraph (B) within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
- (B) ELIGIBLE WATER INFRASTRUCTURE PROJECTS.—In this section the term “eligible water infrastructure projects” means projects for which a non-Federal entity has lead responsibility for approving the overall project, including

projects for which federal agency permitting is required or some federal funding is provided.

(C) ADDITIONAL RESPONSIBILITY.—If a State assumes responsibility under subparagraph (A)—

- (i) the Secretary may assign to the State, and the State may assume, all or part of the responsibilities of the Secretary for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review or approval of a specific project; but
- (ii) at the request of the State, the Secretary may also assign to the State, and the State may assume, the responsibilities of the Secretary with respect to 1 or more eligible water infrastructure projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(D) PROCEDURAL AND SUBSTANTIVE REQUIREMENTS.—A State shall assume responsibility under this section subject to the same procedural and substantive requirements as would apply if that responsibility were carried out by the Secretary.

(E) FEDERAL RESPONSIBILITY.—Any responsibility of the Secretary not explicitly assumed by the State by written agreement under this section shall remain the responsibility of the Secretary.

(F) NO EFFECT ON AUTHORITY.—Nothing in this section preempts or interferes with any power, jurisdiction, responsibility, or authority of an agency, other than the Department of the Interior, under applicable law (including regulations) with respect to a project.

(G) PRESERVATION OF FLEXIBILITY.—The Secretary may not require a State, as a condition of participation in the program, to forego project delivery methods that are otherwise permissible for projects.

(b) STATE PARTICIPATION.—

(1) PARTICIPATING STATES.—California is eligible to participate in the program.

(2) APPLICATION.—Not later than 270 days after the date of enactment, the Secretary shall amend, as appropriate, regulations that establish requirements relating to information required to be contained in an application of a State to participate in the program, including, at a minimum—

- (A) the projects or classes of projects for which the State anticipates exercising the authority that may be granted under the program;
- (B) verification of the financial resources necessary to carry out the authority that may be granted under the program; and
- (C) evidence of the notice and solicitation of public comment by the State relating to participation of the State in the program, including copies of comments received from that solicitation.

(3) PUBLIC NOTICE.—

(A) IN GENERAL.—The State that submits an application under this subsection shall give notice of the intent of the State to participate in the program not later than 30 days before the date of submission of the application.

(B) METHOD OF NOTICE AND SOLICITATION.—The State shall provide notice and solicit public comment under this paragraph by publishing the complete application of the State in accordance with the appropriate public notice law of the state.

(4) SELECTION CRITERIA.—The Secretary may approve the application of a State under this section only if—

- (A) the regulatory requirements under paragraph (2) have been met;
- (B) the Secretary determines that the State has the capability, including financial and personnel, to assume the responsibility; and
- (C) the head of the State agency having primary jurisdiction over water infrastructure matters enters into a written agreement with the Secretary described in subsection (c).

(5) OTHER FEDERAL AGENCY VIEWS.—If a State applies to assume a responsibility of the Secretary that would have required the Secretary to consult with another Federal agency, the Secretary shall solicit the views of the Federal agency before approving the application.

(c) WRITTEN AGREEMENT.—A written agreement under this section shall—

- (1) be executed by the Governor or the top ranking water infrastructure official in the State who is charged with responsibility for water infrastructure construction;
- (2) be in such form as the Secretary may prescribe;
- (3) provide that the State—
 - (A) agrees to assume all or part of the responsibilities of the Secretary described in subsection (a);
 - (B) expressly consents, on behalf of the State, to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary assumed by the State;
 - (C) certifies that State laws (including regulations) are in effect that authorize the State to take the actions necessary to carry out the responsibilities being assumed; and
 - (D) agrees to maintain the financial resources necessary to carry out the responsibilities being assumed;
- (4) require the State to provide to the Secretary any information that the Secretary considers necessary to ensure that the State is adequately carrying out the responsibilities assigned to the State;
- (5) have a term of not more than 5 years; and
- (6) be renewable.

(d) JURISDICTION.—

(1) IN GENERAL.—The United States district courts shall have exclusive jurisdiction over any civil action against a State for failure to carry out any responsibility of the State under this section.

(2) LEGAL STANDARDS AND REQUIREMENTS.—A civil action under paragraph (1) shall be governed by the legal standards and requirements that would apply in such a civil action against the Secretary had the Secretary taken the actions in question.

(3) INTERVENTION.—The Secretary shall have the right to intervene in any action described in paragraph (1).

(e) EFFECT OF ASSUMPTION OF RESPONSIBILITY.— A State that assumes responsibility under subsection (a)(2) shall be solely responsible and solely liable for carrying out, in lieu of the Secretary, the responsibilities assumed under subsection (a)(2), until the program is terminated as provided in subsection (j).

(f) LIMITATIONS ON AGREEMENTS.—Nothing in this section permits a State to assume any rulemaking authority of the Secretary under any Federal law.

(g) AUDITS.—

(1) IN GENERAL.—To ensure compliance by a State with any agreement of the State under subsection (c) (including compliance by the State with all Federal laws for which responsibility is assumed under subsection (a)(2)), for each State participating in the program under this section, the Secretary shall conduct—

- (A) semiannual audits during each of the first 2 years of State participation; and
- (B) annual audits during of the third and fourth years of State participation.

(2) PUBLIC AVAILABILITY AND COMMENT.—

(A) IN GENERAL.—An audit conducted under paragraph (1) shall be provided to the public for comment.

(B) RESPONSE.—Not later than 60 days after the date on which the period for public comment ends, the Secretary shall respond to public comments received under subparagraph (A).

(h) MONITORING. — After the fourth year of the participation of a State in the program, the Secretary shall monitor compliance by the State with the written agreement, including the provision by the State of financial resources to carry out the written agreement.

(j) TERMINATION. —

(1) TERMINATION BY SECRETARY.—The Secretary may terminate the participation of any State in the program if—

- (A) the Secretary determines that the State is not adequately carrying out the responsibilities assigned to the State;
- (B) the Secretary provides to the State—
 - (i) notification of the determination of noncompliance; and
 - (ii) a period of at least 30 days during which to take such corrective action as the Secretary determines is necessary to comply with the applicable agreement; and

(C) the State, after the notification and period provided under subparagraph (B), fails to take satisfactory corrective action, as determined by Secretary.

(2) TERMINATION BY THE STATE. — The State may terminate the participation of the State in the program at any time by providing to the Secretary a notice by not later than the date that is 90 days before the date of termination, and subject to such terms and conditions as the Secretary may provide.

Section 705 Water Rights Protections.

(a) Treatment of Water Rights.

The Secretary of the Interior and the Secretary of Agriculture--

- (1) shall not condition the issuance, renewal, amendment, or extension of any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement on the transfer of any water right (including joint and sole ownership) directly to the United States, or any impairment of title, in whole or in part, granted or otherwise recognized under State law, by Federal or State adjudication, decree, or other judgment, or pursuant to any interstate water compact; and
- (2) shall not require any water user (including any federally recognized Indian tribe) to apply for or acquire a water right in the name of the United States under State law as a condition of the issuance, renewal, amendment, or extension of any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement.

(b) Definition.

For purposes of this Act, the term 'water right' means any surface, groundwater, or storage use filed, permitted, certificated, confirmed, decreed, adjudicated, or otherwise recognized by a judicial proceeding or by the State in which the user acquires possession of the water or puts it to beneficial use. Such term shall include water rights for federally recognized Indian tribes.

c) Impacts on Existing Authorities.

- (1) Nothing in this Act limits or expands any existing legally recognized authority of the Secretaries to issue, grant, or condition any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement on Federal lands subject to their respective jurisdictions.
 - (2) Nothing in this Act shall in any way interfere with existing or future Bureau of Reclamation contracts entered into pursuant to Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act).
 - (3) Nothing in this Act shall affect the implementation of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).
 - (4) Nothing in this Act limits or expands any existing reserved water rights of the Federal Government on lands administered by the Secretary of the Interior or the Secretary of Agriculture.
 - (5) Nothing in this Act limits or expands authorities pursuant to sections 4(e), 10(j), or 18 of the Federal Power Act (16 U.S.C. 797(e), 803(j), and 811).
- ~~(6)(1)~~ Nothing in this Act limits or expands any existing reserved water right or treaty right of any federally recognized Indian tribe.

From: Nelson, Damon
Sent: Thursday, May 21, 2015 7:06 PM
To: Tom Birmingham
CC: Bernhardt, David L.
Subject: Re: Draft

Thank you! Will do.

Damon Nelson
Sent from my iPhone

On May 21, 2015, at 8:13 PM, Tom Birmingham <tbirmingham@westlandswater.org> wrote:

Damon,
Attached is a draft. Please call me in the morning to discuss the proposed amendments.
Tom

<CA Water Draft.doc>

From: Weaver, Kiel
Sent: Sunday, May 24, 2015 9:38 AM
To: Birmingham, Thomas (tbirmingham@westlandswater.org)
CC: David Bernhardt
Subject: Rob Bishop tour

Tom,

Can you let Sarah Woolf know that I will accompany Bishop on Tuesday. I will just meet the tour organizers and Bishop at the airport at 10:30am on Tuesday and ride in the same vehicle. Thanks

Kiel Weaver
Staff Director
House Water, Power and Oceans Subcommittee
1522 Longworth HOB
Washington, DC 20515
kiel.weaver@mail.house.gov
202- [REDACTED]

From: Jason Peltier

Sent: Tuesday, May 26, 2015 10:37 AM

To: 'Alison MacLeod'; 'Carmela McHenry'; 'Carolyn Jensen'; 'Catherine Karen'; 'Dan Pope'; 'Darlene Knauf'; 'David Bernhardt'; 'Dennis Cardoza'; 'Denny Rehberg'; 'Doug Subers'; 'Ed Manning'; 'Erick Mullen'; 'Gayle Holman'; 'Jason Peltier'; 'Jim Watson'; 'Joe Findaro'; 'Mike Burns'; 'Sheila Greene'; 'Susan Ramos'; T Birmingham (tbirmingham@westlandswater.org); 'Johnny Amaral'

Subject: The world we are in: Today's order from CVO (Central Valley Operations)

At 0700 on Thursday May 28, 2015 please turn on a unit and pump 800 cfs (1587 af for a 24 hour period). This will result in a one unit operation.

At 0700 on Friday May 29, 2015, please shut down the unit. This will result in a zero unit operation.

Ordered by: Peggy Manza

Note: Delta outflow and salinity

From: Johnny Amaral
Sent: Wednesday, May 27, 2015 9:27 AM
To: David Bernhardt; Joe Findaro; Denny Rehberg; Dennis Cardoza; Catherine Karen
Subject: Lunch on Monday in DC

Team,

I'm coming in to DC LATE Sunday night, and would like to huddle together for lunch on Monday. Somewhere on or near the hill. Suggestions?